Previous wording	New wording
§ 48.23(c):	
"Chief of the Training Center, MSHA,".	"District Manager".
§ 48.23(d):	
"Chief of the Training Center"	"District Manager".
"Chief of the Training Center"	"District Manager".
"Chief of the Training Center"	"District Manager".
"Chief of the Training Center"	"District Manager".
§ 48.23(e):	
"Chief of the Training Center"	"District Manager".
"Office of Education and Training, MSHA,".	"District Manager".
"Chief of the Training Center"	"District Manager".
"Office of Education and Training, MSHA".	"District Manager".
"by the Office of Education and Training, MSHA,".	
"Office of Education and Training, MSHA,".	"District Manager".
§ 48.23(h):	
"Office of Education and Training, MSHA,".	"District Manager".
§ 48.23(h)(1):	
"Office of Education and Training, MSHA,".	"District Manager".
"Office of Education and Training, MSHA,".	"District Manager".
"Office of Education and Training".	"Office of Education and Policy Development".
§ 48.23(h)(3):	
"Chief of the Training Center"	"District Manager".
"Training Center Chief"	"District Manager".
§ 48.23(i):	
"Chief of the Training Center"	"District Manager".
"Chief of the Training Center"	"District Manager".
"Chief of the Training Center"	"District Manager".
"Director of Education and Training".	"Administrator for Coal Mine Safety and Health or Administrator for Metal and Non-metal Safety and Health, as appropriate".
"Director of Education and Training".	"Administrator".
"Chief of the Training Center's".	"District Manager's".
"Chief of the Training Center"	"District Manager".
§ 48.23(j):	
"Chief of the Training Center"	"District Manager".
§ 48.23(j)(1):	
"Chief of the Training Center"	"District Manager".
"Chief of the Training Center"	"District Manager".
§ 48.23(j)(2):	
"Chief of the Training Center"	"District Manager".
§ 48.23(l):	
"Chief of the Training Center, MSHA, in".	"District Manager of".
"Training Center Chief"	"District Manager".
§ 48.23(m):	
"Chief of the Training Center or the Director of Education and Training".	"District Manager".
"Chief of the Training Center or the Director of Education and Training".	"District Manager".

Previous wording	New wording
§ 48.23(n):	
"Chief of the Training Center or the Director of Education and Training".	"District Manager".
§ 48.24(b):	
"Chief of the Training Center"	"District Manager".
§ 48.25(a):	
"Chief of the Training Center"	"District Manager".
"Training Center Chief"	"District Manager".
§ 48.25(b)(13):	
"Training Center Chief"	"District Manager".
§ 48.26(b)(8):	
"Training Center Chief"	"District Manager".
§ 48.27(a)(4):	
"Training Center Chief"	"District Manager".
§ 48.28(b)(11):	
"Training Center Chief"	"District Manager".
§ 48.31(a)(5):	
"Chief of the Training Center"	"District Manager".
§ 48.32:	
"Training Center Chief"	"District Manager".
§ 48.32(a):	
"Training Center Chief"	"District Manager".
"Director of Education and Training".	"Administrator for Coal Mine Safety and Health or Administrator for Metal and Non-metal Safety and Health, as appropriate".
"Chief of the Training Center's".	"District Manager's".
§ 48.32(b):	
"Director of Education and Training".	"Administrator".
"Chief of the Training Center"	"District Manager".
"Director"	"Administrator".
§ 48.32(c):	
"Director of Education and Training".	"Administrator".
§ 49.8(a):	
"Office of Education and Training".	"Office of Education and Policy Development".
§ 49.8(b)(4):	
"Office of Education and Training".	"Office of Education and Policy Development".
§ 49.8(d)(2):	
"Office of Education and Training".	"District Manager".
"Office of Education and Training".	"District Manager".
§ 49.8(e):	
"Chief of the Training Center"	"District Manager".
"Training Center Chief"	"District Manager".
"Director of Education and Training".	"Administrator for Coal Mine Safety and Health or Administrator for Metal and Non-metal Safety and Health, as appropriate".
"Director of Education and Training".	"Administrator".
§ 49.8(f):	
"Office of Education and Training, MSHA".	"District Manager".

Previous wording	New wording
§ 57.18-28(a):	
"Mine Safety and Health Administration, Division of Education and Training Operations, to give such instruction".	"District Manager of the area in which the mine is located".
§ 57.18-28(b):	
"Mine Safety and Health Administration, Division of Education and Training Operations to give such instructions".	"District Manager of the area in which the mine is located".
"Mine Safety and Health Administration, Division of Education and Training Operations to give such instruction".	"District Manager".
§ 57.18-28(d):	
"Nearest Mine Safety and Health Administration training center".	"District Manager".
§ 57.18-28(e):	
"Mine Safety and Health Administration training center or".	
§ 75.153(c):	
"Training Center Chief of the Training Center".	"District Manager".
"The MSHA Training Districts".	"Coal Mine Safety And Health Districts".
§ 75.153(g):	
"Training Center Chief of the Training District wherein he is employed,".	"District Manager".
§ 75.160-1:	
"Training Center Chief"	"District Manager".
§ 75.1713-3:	
"Training Center Chief"	"District Manager".
"Training Center Chief"	"District Manager".
§ 75.1721(a):	
"Or Training Center Chief as appropriate".	
§ 75.1721(c):	
"Training Center Chief"	"District Manager".
§ 77.103(c):	
"Training Center Chief of any Training Center".	"District Manager".
"The MSHA Training Districts".	"Coal Mine Safety and Health Districts".
§ 77.103(g):	
"Training Center Chief of the Training District wherein he is employed,".	"District Manager".
§ 77.107-1:	
"Training Center Chief of the Training Center".	"District Manager of the Coal Mine Safety and Health District.".
§ 77.1703:	
"Training Center Chief"	"District Manager".
"Training Center Chief"	"District Manager".

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Friday
May 28, 1982

Part V

Department of Labor

Wage and Hour Division, Employment Standards Administration

Office of the Secretary

Procedures for Predetermination of Wage Rates; Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

Office of the Secretary

29 CFR Part 1

Procedures for Predetermination of Wage Rates

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final text of regulations, 29 CFR Part 1, for the predetermination of prevailing wage rates under the Davis-Bacon and Related Acts. The method of determining prevailing wage rates has been revised and a provision for the issuance of semi-skilled classifications on wage determinations has been added.

DATES: Effective date: July 27, 1982. See Supplementary Information for dates of applicability.

FOR FURTHER INFORMATION CONTACT: William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone: 202–523–8305.

SUPPLEMENTARY INFORMATION: On December 28, 1979, a proposal was published in the **Federal Register** (44 FR 77026) to make certain revisions to 29 CFR Part 1, Procedures for Predetermination of Wage Rates under the Davis-Bacon and Related Acts. As stated in the proposal, its purpose was to reexamine and revise the procedures in Part 1 for predetermination of wage rates under the Davis-Bacon and Related Acts.

On January 16, 1981, this regulation was published in the **Federal Register** (46 FR 4306) as a final rule with a scheduled effective date of February 17, 1981. However, pursuant to the President's Memorandum of January 29, 1981, the Department published a notice in the **Federal Register** on February 6, 1981 (46 FR 11253), delaying implementation of this regulation until March 30, 1981. The Department subsequently delayed the implementation of this regulation until August 15, 1981 in order to permit reconsideration pursuant to Executive Order 12291. See 46 FR 18973 (March 27, 1981); 46 FR 23739 (April 28, 1981); 46 FR 33514 (June 30, 1981); and 46 FR 36140 (July 14, 1981).

On August 14, 1981, a new regulatory proposal developed in accordance with Executive Order 12291 was published in the **Federal Register** (46 FR 41444), and the previously published rule was further postponed until action could be taken on the new proposal. (See 46 FR 41043.)

Interested persons were afforded the opportunity to submit comments to the Wage and Hour Division withing 60 days after publication of the proposal in the **Federal Register.** Comments were received from approximately 2,200 interested parties, including Members of Congress, contracting agencies, contractor associations, contractors, labor organizations, State and local governmental agencies, business organizations, and individuals. Many comments were received either supporting or opposing the proposal in general. More than 1,000 comments (mostly from construction firms and associations) were directed solely to the issue of helpers in this proposal and a related proposal in 29 CFR Part 5.

Contractor associations and business organizations submitting comments included the Associated General Contractors of America (AGC), the Associated Builders and Contractors, Inc. (ABC), the National Association of Home Builders (NAHB), the Chamber of Commerce of the United States (C of C), the National Association of Manufacturers (NAM), the Business Roundtable, the National Federation of Independent Business (NFIB), the National Utility Contractors Association (NUCA), the Sheet Metal and Air Conditioning Contractors' National Association, Inc. the American Road and Transportation Builders Association, the National League of Cities (NLC), the National Association of Counties, the Council of State Housing Agencies, the National Sand and Gravel Association, and the National Ready Mixed Concrete Association. Labor organizations commenting on the proposal included the Building and Construction Trades Department of the AFL–CIO (BCTD), the Laborers' International Union of North America (LIUNA), the United Brotherhood of Carpenters and Joiners of America (UBC), the International Brotherhood of Electrical Workers (IBEW), the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry (UA), the International Brotherhood of Teamsters (Teamsters), the International Association of Bridge, Structural and Ornamental Iron Workers (Iron Workers), the International Union of Operating Engineers (IUOE), the United Automobile Workers of America (UAW), the Sheet Metal Workers' International Association (SMW), the Operative Plasterers' and Cement Masons' International Association (OPCM), and the International Brotherhood of Painters and Allied Trades (PAT). Among those Federal agencies submitting comments were the Department of Defense of Defense (DOD), the Department of Transportation (DOT), the Department of Energy (DOE), the National Aeronautics and Space Administration (NASA), the U.S. Postal Service (USPS), and the Small Business Administration (SBA).

Discussion of Major Comments

The following is an analysis of all the principal comments received and the corresponding changes, if any, made to the proposed rule. Each submission has been thoroughly reviewed, and each criticism and suggestion has been given careful consideration. For each section and, where appropriate, subsection of the final rule, the analysis contains a description of the major comments, the Department's conclusions regarding those comments, and the substantive changes herein adopted.

Section 1.2(a)—Definition of Prevailing Wage

Numerous comments favoring the proposal to eliminate the 30 percent rule were received from such parties as the AGC, NAM, NLC, USPS, local government agencies, contractors, and State contractor associations. These commentators stated that a rate based on 30 percent does not comport with the definition of "prevailing", and that the 30 percent rule gives undue weight to collectively bargained rates. Commentators also asserted that the 30 percent rule is inflationary because it sometimes results in wage determination rates higher than the average.

Other contractors and associations, while agreeing in principle with the proposal's elimination of the 30 percent rule, asserted that the proposed change in the definition of prevailing wages did not go far enough. Several commentators, including the ABC, NAHB, and the Council of State Housing Agencies, recommended that the weighted average rate be used in all cases. The C of C and some others recommended that the prevailing rate be determined either by eliminating the higher 50 percent of the wage rates paid in a locality and adopting the weighted average of the lower 50 percent of the wages paid, or by adopting the entire

range of wage rates existing in a locality.

The BCTD, a few contractor associations, and some State labor departments commented in favor of retaining the current 30 percent rule for determining prevailing wages. The major arguments made by these commentators were that the term "prevailing" contemplates the most frequently paid actual rate and thus, even the 30 percent rule unduly constricts the meaning of the statutory language; that an average rate is an artificially determined rate and therefore less consonant with the legislative intent than a rate which is actually paid; that the rule has been used by the Department since 1935 and was specifically endorsed by the House Special Subcommittee on Labor in 1962; and that elimination of the rule would disrupt labor relations and harm the competitive standing of unionized firms. The BCTD also asserted that any immediate wage savings would be more than offset by lower productivity, and thus, that overall construction costs would increase.

The Department agrees with the criticisms of the 30 percent rule. However, the Department has rejected the suggestion to define the prevailing wage as the weighted average wage in all cases because the term "prevailing" contemplates that wage determination rates mirror, to the extent possible, those rates actually paid in appropriate labor markets. In addition, the definitions of prevailing wage urged by the C of C are contrary to the prevailing wage concept embodied in the Davis-Bacon Act. Using the average of the lower 50 percent of wage rates paid would exclude the higher 50 percent of wages from consideration and, therefore, could not be considered the prevailing wage. Similarly, adopting the entire range of wages in the locality would permit contractors to pay the lowest wage that exists for a particular classification, rather than the "prevailing" rate.

Based on the comments and our analysis of the statute, we have concluded the term "prevailing wage" contemplates the most widely paid rate as a definition of first choice. The Department has accordingly determined that the revision which defines prevailing wage as the majority, or weighted average where there is no majority, is the most proper interpretation of the statute. Section 1.2(a) is therefore adopted as proposed.

Section 1.3—Wage Data Considered—Use of Wage Data From Projects Subject to Davis-Bacon

The preamble to the proposed regulations solicited comments on whether projects subject to Davis-Bacon wage determinations should be excluded from the Department's wage surveys. Comments were specifically invited on the feasibility of differentiating Federal projects in wage surveys; the feasibility of determining prevailing wages for categories of construction which almost always involve Federal funding, if such projects are excluded; and the feasibility of differentiating projects where the contractor would otherwise have paid the wages contained in the wage determination.

Several commentators, including ABC, NAHB, NASA, and DOE, favored excluding Federal projects from wage surveys in all cases, although they did not comment specifically on the feasibility of such an exclusion. These commentators asserted that the Act was intended to require contractors to pay, at a minimum, those rates found to be prevailing on *private* construction projects in the area in which the federal work is to be performed. These commentators argued that including wage data from construction projects subject to the Act in surveys skews the survey results upward. DOT commented that it saw no problem in excluding wages paid on Federal projects from surveys. It recommended that such data be excluded except in those cases where there is not a sufficient sample of privately financed construction to establish a wage rate.

The BCTD, most building trades unions, the Teamsters, the United Auto Workers, the Minnesota Building and Construction Trades Department, the North Carolina and Iowa Departments of Transportation, the Texas Highway Department, the Texas Heavy-Highway Branch of AGC, and the Colorado Contractors Association opposed the exclusion of Federal wage data. Many of the union commentators asserted that the Act's legislative history shows no Congressional intent to restrict wage surveys to privately financed projects, and that the 1935 amendments extending the Act's coverage to public works implied that Federal projects would be surveyed since the Act requires payment of wages prevailing on projects "of a character similar", and there are few projects of a character similar to public works which are not federally financed.

Most commentators in opposition to the exclusion claimed that, as a practical matter, it would be administratively difficult or even impossible to establish wage determination rates for several types of construction projects that are always or nearly always federally financed, such as highways, bridges, dams, and sewage treatment plants, and for certain craft classifications in rural areas. The MBCTD claimed that it would also be administratively difficult and costly to determine whether a given wage rate would have been paid absent a wage determination, noting that the State of Minnesota had attempted to make such a differentiation in its wage surveys but was unable to do so.

The Department has concluded that, where practicable, it would be appropriate to exclude wage data from Davis-Bacon projects in determining prevailing wages. The Department also believes this result is in accordance with the statutory purpose. Accordingly, § 1.3 has been revised to provide that wages paid on projects subject to the Davis-Bacon Act will not be considered in developing wage determinations for "building" and "residential" projects unless the Department finds that there is not sufficient data from privately financed construction projects of a similar character to determine prevailing wages. We have also concluded that it would not be practical to determine prevailing wages for "heavy" and "highway" construction projects if Davis-Bacon covered projects are excluded in making wage surveys because such a large portion of those types of construction receive Federal financing. The regulation therefore permits the use of such data on these types of projects.

Section 1.6(a)(1)—Expiration Date of Project Wage Determinations

Several commentators, including ABC, AGC, and some State contractor associations, commented in favor of the proposal to extend the expiration date of project wage determinations from 120 days to 180 days.

The BCTD, the Teamsters, the UAW, and others opposed this proposed change, claiming that extending the duration of project determinations will increase the likelihood that rates contained in wage determinations will be out of date before the start of construction.

Extending the life of project wage determinations to 180 days will reduce the need for recompetition and other procurement delays caused by the expiration of such determinations after bid opening. Also, as a practical matter, it is the Department's experience that

most such determinations are used within a shorter period of time. Accordingly, this proposal is deemed reasonable and is adopted.

Section 1.6(b) and Appendix C

Several State chapters of AGC objected to the categorization of construction in proposed Appendix C (which embodies the substance of All Agency Memoranda Nos. 130 and 131) on the ground that it would amount to an imposition of standards that are nationwide in scope, ignoring local area construction practices. A few contractor associations stated that the categories of construction overlapped. Some associations disagreed with the proposed categorization of certain types of work. Contractor groups also suggested that the regulations require agencies to state specifically in the contract which schedule of wage rates is applicable.

The Department has reconsidered the advisability of including in the regulations the specific guidelines of All Agency Memoranda Nos. 130 and 131. It has concluded that the best interests of all concerned parties would be more fully served by retaining the Memoranda as guidelines rather than as regulations. However, in the near future the Department will amend the guidelines and issue a new memorandum to all federal agencies to insure that local practices will be the primary consideration in resolving disputes in this area. The Department will also publish this new memorandum as a notice to the public in the **Federal Register.**

Section 1.6(b) has also been amended to clarify that contracting agencies are responsible for identifying as specifically as possible the appropriate schedule(s) to be applied to a contract.

Accordingly, Appendix C is deleted from the regulations.

Section 1.6(c)—"10-Day Rule"; "90-Day Rule"

Several commentators, including ABC, NASA, DOE and some State highway agencies, objected to the proposed revisions of the "10-day rule" which would (1) require contracting agencies to accept modifications to wage determinations received less than 10 days before the opening of bids unless the agency finds there is not sufficient time to notify bidders of the modification, and (2) also require the agency to insert a report of such finding in the contract file, and make it available to the Administrator upon request. Most of these commentators recommended that the current "10-day rule" (which requires agencies to use modifications received less than 10 days before bid opening only if it is found that there is sufficient time to notify bidders) be retained, while others recommended that a 20-, 25-, or 30-day rule be adopted.

DOL's policy has been that bid solicitations should contain the most recently issued determination of current prevailing wages which can be included without causing undue disruption of the procurement process. However, in the past, many contracting agencies have declined to use wage modifications received less than 10 days before bid opening, even though there may have been more than sufficient time to notify bidders of the modification prior to bid opening.

The courts have held that the current "10-day rule" imposes an affirmative obligation on the contracting agencies to make a substantive determination as to whether there is sufficient time to notify bidders of modifications received less than 10 days before bid opening. (*Operating Engineers, Local 627* v. *Arthurs,* 355 Supp. 7 (W.D. Okla.), *Aff'd,* 480 F. 2d 603 (10th Cir. 1973).) In view of this obligation and the Department's experience that the agencies often misunderstand that obligation to make such a determination, it was decided that the Act could be better implemented by adopting the proposed revision. DOL also believes that the notification process can be completed in most cases without undue disruption of the procurement process or inflation of bid prices. Of course, it is recognized that there may be cases where an agency will find that it is not feasible to adopt modifications less than 10 days before bid opening. In such cases, the agency would simply be required to document its finding of insufficient time prior to bid opening and incorporate this finding in the contract file. While we have considered the objections to this reporting requirement, we find that written documentation of the agency's finding of insufficient time is in accord with sound administrative practices and does not impose an undue paperwork burden upon the agency.

ABC objected to the "90-day rule", which provides that if a contract to which a general wage determination has been applied has not been awarded within 90 days after bid opening, any modification published prior to contract award would be effective unless the agency has obtained an extension of the 90-day period from the Administrator. ABC asserted that the proposed rule would be disruptive to the procurement process and is beyond DOL authority.

The Department's obligation to insure that the most current determination of prevailing wages is included in contracts subject to the DBA is frustrated by lengthy delays which occur between bid opening and contract award. Further, the regulation permits the agency to request an extension of the 90-day period in cases of undue hardship. Therefore, we believe the "90-day rule" is appropriate.

Since it is the Department's experience that projects assisted under the National Housing Act and section 8 of the U.S. Housing Act of 1937 are not generally competitively bid and since it therefore would be confusing to suggest that the 10-day rule could apply to such projects, the Department has determined upon review that the references to competitive bidding should be deleted from the pertinent paragraphs in § 1.6(c). No other changes are being made in this section.

Section 1.6 (e) and (f)—Incorporation of Wage Determinations and Modifications After Contract Award

A few commentators questioned DOL's authority to require the incorporation of a new wage determination in a contract any time before award (or in some cases, after award) when the agency fails to include any wage determination in a covered contract, or has used an inapplicable wage determination or one that contains substantial errors. DOT, DOE, and NASA asserted that the contracting agency, not DOL, has authority to make determinations of coverage under the Davis-Bacon Act. ABC commented that the provisions in question are disruptive, and that the regulations should contain more specific criteria regarding the circumstances in which DOL would exercise its authority to incorporate new wage determinations.

The BCTD, several building trades unions, the Teamsters, and the UAW objected to the provision in § 1.6(f) that corrective action to include the proper wage determination after contract award would occur only if the contractor is compensated, in accordance with applicable procurement law, for any increase in wages resulting from such action, asserting that the agencies could use this provision to resist post-award amendment of any contract which contains an invalid wage determination.

Since the Davis-Bacon Act requires that all covered contracts contain an applicable wage determination, DOL must provide some mechanism for the incorporation of proper wage determinations in covered contracts after contract award. The Department's authority in this regard, including the

authority to determine questions of coverage under the Act, is derived from the Act as well as from Reorganization Plan 14 of 1950.

With respect to the ABC comment, the Department agrees that the provision in § 1.6(e)(2) permitting withdrawal of wage determinations containing "substantial errors" without regard to the 10-day rule is not sufficiently specific. Accordingly, § 1.6(e)(2) is revised to permit such withdrawals only as a result of a decision by the Wage Appeals Board.

As to the comments from labor organizations, we believe it would be inequitable to require corrective action after contract award if the contractor would be financially harmed in rectifying a Government error. Nor should contracting agencies be placed in the position of contravening procurement law. The regulation contemplates that the agencies will find a method to incorporate a proper wage determination in a contract and compensate a contractor, where appropriate, which is in accord with procurement law. Accordingly, no changes are made in § 1.6(f).

Section 1.7(b)—Scope of Consideration

Numerous commentators, including AGC, ABC, NLC, NAHB, State contractor associations, and individual contractors, agreed with the proposal to prohibit the use of wage survey data obtained from a metropolitan area in issuing a wage determination for a rural area, and vice versa. Their rationale was that this provision would prevent the "importation" of generally higher metropolitan wages into lower paid rural areas. NUCA commented that in the past, such importation has disrupted labor relations in rural areas, because employees who received high wages on a Davis-Bacon project were unwilling to return to their usual pay scales after the project was completed.

The BCTD and many individual building trades unions opposed the blanket prohibition. Several of these commentators stated that there is a need to retain flexibility in certain cases when wage data are unavailable in the rural area where the work will be performed, and that "importing" rates from nearby metropolitan areas in such cases is justified because workers from metropolitan areas often perform the work due to a shortage of skilled labor in the vicinity of the project.

Several commentators, including the AGC and some of its local chapters, noted that the definition of "area" in § 1.2(b) of this part includes political subdivisions smaller than the county, and claimed that our reliance in § 1.7(a) on the county as the normal survey area is not consistent with the intent of the Davis-Bacon Act. They suggested that DOL consider smaller local civil subdivisions within the county as the basis for making wage determinations. Other commentators, including the Texas Highway Department, the Texas Heavy-Highway Branch of AGC, and the Carolinas Branch of AGC, urged the Department to expand the area of consideration to the Standard Metropolitan Statistical Area or some other larger area, in cases where the same wage pattern exists throughout the area.

The Department has determined that its past practice of allowing the use of wage data from metropolitan areas in situations where sufficient data does not exist within the area of a rural project is inappropriate. Therefore, the prohibition proposed against this practice is adopted.

In response to the union comments, the Department notes that if sufficent data is not available from contiguous rural counties, it would be obtained from other rural counties in the State, and if, as these comments suggested, large numbers of workers from metropolitan areas typically work at higher metropolitan wage rates on projects in rural areas, those higher wages would be found and receive proper weight in surveys of wages paid in such areas.

With respect to comments on the size of the survey area, experience has demonstrated that the standard, but not inflexible, practice of using the county as the area of consideration is the most administratively feasible approach to collecting meaningful data. In our view, this practice is in accord with the Act. In answer to the commentators who suggested that we recognize areas larger than one county, where a survey reflects that the same rate in fact prevails in several contiguous counties within a State, a single wage determination may be used for the entire area.

Section 1.7(d)—Helpers

A very large number of commentators, particularly various contractor associations such as ABC and AGC and their affiliates, the NAM, NAHB, the Business Roundtable, the C of C, and numerous individual nonunion contractors, generally favored the proposal to increase recognition of helper classifications. They noted that the proposal reflects the construction industry's actual practice on private projects, and they stated that adoption of the proposal would result in increased job opportunities for youth, women, and minorities.

The building trades unions and some State and local governmental agencies opposed increased recognition of helpers on the grounds that this would undermine formally established apprentice and trainee programs to the determent of minorities and unskilled workers. In their view, it would also lead to shortages of qualified journeymen. Most union groups felt the proposal was contrary to the statute because it allows the use of helpers without a finding that such a classification practice prevails in the area.

The Department currently recognizes a helper classification only where it is a separate and distinct class of workers which prevails in the area, and where the helpers' scope of duties can be differentiated from those of journeymen. The Department has concluded this restrictive approach is inappropriate. Increased recognition of helpers will reflect the widespread industry practice of employing semi-skilled workers on construction projects, including both helpers working in a particular craft and cross-craft or general utility helpers. This will not only result in considerable cost savings to the Government but will result in more job opportunities for unskilled and semi-skilled workers (including youth, women, and minorities) and encourage their use in a manner which provides training. It will enhance productivity by allowing such workers to do tasks requiring more limited skills, thus allowing higher skilled workers to use their skills more effectively. It will also enable more contractors to compete for Government work. (See also the related changes proposed to 29 CFR Part 5 regarding the allowable use of helpers and the discussion of comments received thereon.)

Accordingly, § 1.7(d) is adopted with clarifying changes.

In addition to the above, minor editorial and language changes have been made in some sections.

Classification

This rule would not appear to require a regulatory impact analysis under Executive Order 12291 since the changes will result in substantial cost savings annually for both contractors and the Government while still assuring protection of local labor standards. However, because of the importance to the Government and the public of the issues involved, the Department has concluded that the regulation should be deemed a "major rule" for purposes of the Executive Order. It has been determined, in accordance with

Executive Order 12291, that these changes are the most cost-effective regulatory alternatives consistent with the purpose of the statute.

Summary of Final Regulatory Impact and Regulatory Flexibility Analysis

The Department has prepared its final regulatory impact analysis to identify and quantify the cost impact of the final Davis-Bacon regulations and various alternatives that were explored and to inform the public of the economic considerations behind these final revisions in accordance with Executive Order 12291.

The final analysis builds upon a preliminary regulatory impact analysis (PRIA) which accompanied the proposed revisions published on August 14, 1981 (46 FR 41444). The PRIA estimated that the proposed changes would result in substantial cost savings amounting to at least $670 million annually to both contractors and procuring agencies, while still assuring protection of local wage rates and practices. The Department requested comments and additional information on all economic assumptions used in the analysis, as well as any alternative suggestions designed to achieve the objectives of the Davis-Bacon and Related Acts at lower costs. The Department received numerous comments on the PRIA estimates and its economic assumptions. The Department has carefully reviewed all of these comments in finalizing the regulations and has incorporated these considerations, as appropriate, into the final regulatory impact analysis (FRIA).

The final rule must also consider the Regulatory Flexibility Act of 1980. This Act requires agencies to prepare regulatory flexibility analyses and to develop flexible alternatives whenever possible in drafting regulations that will have "a significant economic impact on a substantial number of small entities." The analysis summarized below meets the requirements set forth for assessing the economic impact of the final changes in the Davis-Bacon regulations on small entities as required under the Regulatory Flexibility Act.

A. Definition of "Prevailing" Rate

The existing regulations define the "prevailing" rate as the rate paid to the majority of the employees in a classification; or if there is no majority, the rate paid to the greatest number, provided it constitutes at least *30 percent* of the employees in the classification; or if no single rate is paid to at least 30 percent of the employees, the *weighted average* rate.

The proposed regulation re-defined the "prevailing" rate as the single rate paid to a majority of workers in a particular classification on similar construction in the locality, or the weighted average rate if no single rate is paid to a majority. The PRIA estimated that elimination of the "30 percent" rule would result in substantial cost savings on Federal and federally assisted construction contracts amounting to at least $120 million in Fiscal Year 1982 alone.

Many commentators on the preliminary analysis argued that the $120 million estimate of cost savings was too high. Construction unions generally faulted the analysis for ignoring the productivity differences between workers and for implicitly assuming that all workers on covered construction projects earn the prevailing (Davis-Bacon) rate. The Building and Construction Trades Department (BCTD) placed the maximum cost savings at $45 million annually and advocated retention of the current definition. In contrast, most contractor associations (which generally advocated greater revision of the definition) argued that few cost savings would result from the proposal because the wages of many workers are fixed by collective bargaining agreements. These groups offered alternative estimates ranging from no cost savings to $50 million.

While acknowledging the validity of several of these criticisms, it remains our position that the $120 million estimate represents a "best guess" of the likely cost savings. Many of the alternative estimates were based on an inaccurate reading of our methodology, which in fact took into account that few cost savings would result in highly unionized urban areas. In other cases, the direction of the bias asserted to exist in our PRIA by the comments was unclear, rather than working to inflate the cost savings. Moreover, the commentators ignored significant negative biases which would raise the cost savings, such as the bias resulting from the lack of construction wage data for small cities. All of the limitations associated with our methodology are clearly spelled out in the analysis.

After careful review of all the evidence, the Department has adopted the proposed definition not only because it will result in substantial budgetary savings, but also because it is most consistent with the "prevailing wage" concept contemplated in the legislation, under which rates are designed to mirror, to the extent possible, those customarily paid in appropriate labor markets.

The Department also considered defining the "prevailing" rate as the average in all cases as proposed by the Associated Builders and Contractors Inc. (ABC). This alternative was not selected because the term "prevailing" contemplates the most widely paid rate as a definition of first choice.

Several other alternatives were also considered including (1) setting wage determinations at the average of rates in the lower half of wage distributions for crafts in a locality (as proposed by the United States Chamber of Commerce); (2) issuing wage determinations as a range of wage rates reflecting the actual distribution of wages in a locality (also proposed by the United States Chamber of Commerce); and (3) allowing procurement agencies to set rates based on, rather than identical to, DOL determinations (the "decoupling" approach). The Department has carefully considered these options, but concluded that they would not be consistent with the statute's intent.

The DOL methodology which is the basis for the $120 million estimate of cost savings calculates the change in wage costs under different decision rules by comparing a large sample of 1,170 Davis-Bacon craft determinations in effect in 1981 with average wage rates for those crafts and localities derived from field surveys conducted by the Employment Standards Administration (ESA). Our sample covered nine crafts and three types of construction (i.e., building, highway and heavy and residential) across all regions of the country.

Because we know the decision rule actually used in setting each Davis-Bacon determination in the sample and the wage rates paid workers in geographic areas, the impact on Davis-Bacon rates of any change in administrative procedures can be readily determined. For example, to evaluate the percentage change expected in Davis-Bacon rates associated with dropping the 30 percent rule, all determinations in the sample based on this rule were compared with their corresponding average rates to calculate the percent differences in the Davis-Bacon rates. For those determinations based on the majority or average rule, the percent differences were set at zero.

However, many Davis-Bacon determinations are not based on comprehensive wage surveys but rather on collective bargaining agreements or state surveys. Hence, results based solely on the sample will be biased if there is a higher frequency of determinations based on the 30 percent

rule in non-surveyed areas. Clearly, average rates cannot be issued without a wage survey; hence, it is likely that Davis-Bacon determinations are implicitly based more frequently on the 30 percent rule in non-surveyed areas.

To adjust our estimates for this possible sample bias, we used both survey data and independent sources to construct estimates of percent differences for all areas lacking surveys. For example, in large urban areas where wage determinations are based on collective bargaining agreements, information on the percentage of workers who are unionized in the area was used to determine the impact of using the majority rule or the average. Where the extent of unionization was sufficiently high, current rates could be expected to prevail even in the absence of the 30 percent rule. We, therefore, assumed that there would be no change in Davis-Bacon rates. Otherwise, we used estimates of percent changes from Davis-Bacon rates to average rates derived from a CEA study of less unionized urban areas.

With estimates in hand for each county, we then summed the percentage differences for each type of construction across all geographic areas (both rural and urban) based on their relative contribution to total public construction activity. This resulted in three separate estimates of the expected percentage change in Davis-Bacon wage rates from adopting different administrative procedures, one for each construction sector.

The final step involves matching these percent changes in wages to estimates of the total labor costs expected to be covered by Davis-Bacon in Fiscal Year 1982 for each type of construction. We then added up the separate labor cost savings estimates for each construction sector to form our final estimate of the aggregate wage cost savings from alternative wage determination rules. The final regulatory impact analysis describes the methodology in further detail.

This methodology was used to estimate the cost impact of dropping the 30 percent rule and of using the average rule in all cases. This procedure produced cost savings ranging from $68 million to $173 million from eliminating the 30 percent rule. The average cost savings in this range is around $120 million. The corresponding estimates of cost savings from switching to an average rule in all cases range from $127 million to $288 million, with average cost savings set at $210 million.

This methodology could not be applied to estimate the cost impact of most other alternatives under consideration because of the absence of independent data on which to calculate the differences in wages resulting from these other options for non-surveyed areas. Also, and perhaps more importantly, this methodology measures only the changes in Davis-Bacon rates, not actual changes in wage rates paid on Davis-Bacon projects. The further one moves the Davis-Bacon minimum below the average, the less reflective it is of actual prevailing wages and hence of the real cost savings to be anticipated.

Although the Department concluded that such an approach would be inconsistent with the statute's intent, we developed a crude estimate of the potential cost savings from the alternative calling for a range of wages rather than a single rate for each determination in a locality, using our methodology and the results of a CEA study which estimated the net impact of setting minimum wages on Davis-Bacon projects. This estimate is similar to the alternative that establishes a range of wage rates, since the lowest rate in the range effectively becomes the Davis-Bacon minimum. This procedure produced cost savings estimates ranging from $505.3 million to $631 million with a midpoint estimate of $568.2 million for this option.

Much of these cost savings would be passed on to small contractors. The Census Bureau's Economic Census of Construction shows that in 1977 there were 53,665 construction establishments with fewer than 20 employees involved in construction work. These small contractors accounted for about 56 percent of all such construction establishments, but only about 17 percent of employment. While we could use relative employment percentages to distribute the total cost savings from adopting alternative wage determination procedures among large and small contractors, this would be inappropriate since smaller contractors are more likely to pay wages normally below Davis-Bacon rates, resulting in relatively larger cost savings for small contractors from any lowering in Davis-Bacon rates. Although we can not develop numerical cost estimates, the cost savings would be expected to be substantial.

While our approach provides a reasonable approximation of the wage cost savings expected to result from the final regulation, it should be stressed that they are only a proxy for actual construction *cost* differences. Nevertheless, these wage estimates are a useful indicator of the order of magnitude of the lower construction costs that may be expected from the final change in the definition of prevailing wages.

B. Cost Impact of the Expanded Issuance of Semi-Skilled Classifications

The Department has long permitted exceptions from predetermined Davis-Bacon rates set for a craft classification for apprentices and trainees who are in approved programs. The Department has also recognized a helper classification in some areas under certain well-defined situations where (1) it constitutes a separate and distinct class of workers (i.e., the scope of duties of the helper is defined and can be differentiated from journeyman duties); (2) the particular helper classification prevails in the area; and (3) the helper is not used as an informal apprentice or trainee.

During its review, the Department concluded that the current policies regarding semi-skilled crafts do not adequately reflect construction industry practices, in particular, the widespread use of helpers to perform certain craft tasks. The proposed revisions allowed for the issuance of semi-skilled classifications such as helpers or other subclassifications of a journeyman class that could be identified in the locality. Helpers were permitted as long as their use did not exceed a ratio of one helper to five journeymen. The proposal further allowed contractors to conform rates after award for helper classifications which were not issued in the wage determinations, but which the contractor felt were appropriate to performing the contract work so long as those classifications were currently utilized in the locality. The PRIA estimated that these proposed changes would result in significant cost savings of about $450 million in Fiscal Year 1982.

Many commentators viewed these cost estimates as excessively high. Contractor associations welcomed the helper classifications, but criticized the 1:5 ratio as an artificial rule that would prohibit the following of area practices. These groups argued that the ratio, coupled with the considerably lower ceilings specified by collectively bargained contracts, would significantly dampen the cost saving—to about $200 million annually. Construction unions, on the other hand, did not comment on the ratio *per se*, but instead focused on the PRIA assumption that each helper employed on Davis-Bacon projects would replace one journeyman. They argued that the analysis overstated the cost savings because it ignored the low productivity of helpers relative to journeymen and the likelihood that helpers would be better substitutes for lower-paid laborers and apprentices than for journeymen. The construction

unions also pointed to possible long-term cost increases due to a shortage of skilled craftsmen.

These comments prompted a thorough re-evaluation of the helper cost methodology. Some comments required no new adjustment; for example, our methodology already controlled for the minimal use of helpers on union projects. The revised helper methodology incorporated relevant criticisms from both business and labor groups to the extent permitted by available data. The revised estimates were also based on more recent data showing a sharp drop in construction industry employment (and hence anticipated helper employment on Davis-Bacon projects).

The final helper regulations preserve the basic elements of the proposal with several changes. These changes include: (1) Lowering the ratio from 1:5 to 2:3 (2 helpers allowed for every 3 journeymen) to better reflect the diversity in industry practices, and (2) permitting helpers to include multitrade, as well as single craft, helpers to provide employers with maximum flexibility in their employment practices on Davis-Bacon jobs.

The basic methodology remains the same as that found in the PRIA—using evidence on the mix of skills in the construction industry *as a whole* to predict the increased helper employment on Davis-Bacon projects as a result of the regulation. The expected savings in wage costs on Davis-Bacon construction are derived by multiplying estimates of increased helper employment by changes in wage bills for contractors.

However, in the present analysis, we develop separate estimates of the likely cost savings from the regulations for the unrestricted use of helpers and for alternative ratios of helpers to journeymen. In addition, we test the sensitivity of the estimates to various assumptions regarding the skill level of workers replaced by helpers. One set of cost estimates assumes that helpers replace journeymen only. A second series of cost estimates allows helpers to replace laborers as well as journeymen.

The initial step involves determining the number of construction workers employed on Davis-Bacon projects and the number of helpers likely to be employed on Federal and federally-assisted construction work. For this analysis, we use a more recent estimate of construction employment showing that there were 758,000 construction workers on Davis-Bacon projects during 1980 (the PRIA used an estimate of one million total employees in the construction industry covered by Davis-Bacon in 1979). The FRIA discusses the derivation of these estimates in further detail.

While their skill composition is unknown, we assume that in the absence of any restrictions on their use, the helper share of employment on Davis-Bacon projects would be identical to that found overall in construction (excluding residential construction under 5 stories). The estimated helper share based on the 1976–1977 BLS survey of large metropolitan areas would be 3.2 percent and 5.6 percent, depending on whether we used the entire survey or only those occupations in the survey that specifically identify helpers.

However, the helper shares estimated directly from the BLS survey may be biased because of its limitation to large metropolitan areas and the 1976–1977 period. The BLS survey shows about 78 percent of construction workers under collective bargaining agreements. Although such agreements are almost certainly more prevalent on Davis-Bacon construction that on all construction, the BLS survey probably over-represents the percent of union workers on Davis-Bacon projects nationwide. This means that estimates of the helper employment share based on the BLS survey will be too small compared to total Davis-Bacon construction. To correct this bias, we base alternative helper estimates on the conservative assumption that the true union share of Davis-Bacon employment is 50 percent. Weighting the individual estimates found in the BLS survey data of helper employment shares within the union and non-union sectors produces adjusted estimates of the helper share of 5.98 percent and 9.4 percent.

This gives us four estimates of helper employment. Assuming that the high unionization rate found in the BLS survey of large cities prevails in all areas with Davis-Bacon projects, we can estimate that there will be between 24,256 and 42,448 additional helpers on Davis-Bacon projects. Assuming that 50 percent of the workers on Davis-Bacon jobs are organized would translate into higher estimates—45,328 and 71,252 additional helpers on Davis-Bacon jobs.

When helpers substitute for laborers in some cases as well as journeymen, the helper estimates need to be further adjusted. While it is difficult to evaluate the precise extent of this combined substitution, we use the estimated helper shares from above, but assume that helpers replace both types of labor as long as the proportion of laborers and journeymen found in the BLS Survey remains constant (i.e., the laborer to journeymen ratio). The BLS data shows the laborer to journeymen ratio to range between 2:5 and 5:11 for all construction projects in the sample. This produces estimates of helpers ranging from 24,256 to 64,056.

The second step is to calculate the expected hourly wage cost savings from hiring these helpers instead of journeymen. Using the PRIA procedures, we estimate the average wage differential between helpers and journeymen, based on the same 1977 BLS survey of large metropolitan areas adjusted to FY 1982 levels. This produces estimates of $5.72 and $5.73 as the absolute wage differential between helpers and journeymen.

For the adjusted estimates where we assume that 50 percent of Davis-Bacon is covered by union contracts, it was necessary to recalculate the wage rates accordingly. Separate union percentages for journeymen and helpers from the BLS survey were used to weight the union and non-union average hourly wage rates to arrive at the new overall averages of about $6.70.

The above estimates of wage differences assume that helpers replace only journeymen. If helpers substitute for laborers in some cases as well as journeymen, the wage differences in some cases will narrow substantially—ranging from $4.95 to $5.71. The final regulatory impact analysis describes these wage calculations in further detail as well as the biases involved in the use of average wage rates.

The next ingredient needed to compute the expected cost savings is an estimate of average hours worked annually in construction. The PRIA used an estimate of 1535 hours worked per year. However, in light of the ABC comments showing that contractors' annual work hours average well over 1900 hours and the fact that seasonality is already controlled for by our use of annual averages of monthly employment levels, we used 1924 hours from *Employment and Earnings* published by the Bureau of Labor Statistics as the estimate of annual hours worked per full year construction worker to convert helper employment levels into their total hours equivalents.

Our estimates of the resulting cost savings from increased recognition of helpers with no ratio were obtained simply by multiplying numbers of helpers by hours worked in a year (1924) and various estimates of the existing wage differential between helpers and journeymen and laborers.

However, where there is a ceiling restriction on the employment of helpers to journeymen, another step is necessary—modifying the methodology

to lower the estimates of helper employment. The new calculations assume that any ceiling has no impact on the union sector, since there are few helpers in union firms. However, the 1976–1977 BLS survey suggests that outside of residential construction under 5 stories, the average non-union ratio of helpers to journeymen is around 1:4. This means that the proposed 1:5 ratio or to a lesser extent the final 2:3 ratio would be limiting for some non-union firms and that the overall helper:journeymen ratio on federally-finded non-union projects would fall somewhat below 1:5.

For our analysis, we assumed that the proposed 1:5 regulation would result in an average ratio of 1 to 5.5 on federally-funded non-union projects, while a ratio of 2:3 would result in a higher average of 1 to 4.25 on these same projects. These new ratio assumptions have the effect of lowering the previous helper estimates.

Finally, when helpers substitute for laborers in some cases as well as journeymen, the helper estimates need to be further adjusted in the presence of a ratio. In this case, the ceiling restrictions lower helper employment in the non-union sector in two ways—(1) Directly decreasing the allowed substitution of journeymen, and (2) increasing the number of laborers required to keep the proportion of laborers to journeymen constant.

The results of these calculations show that with a 1:5 ceiling and with helpers replacing journeymen, the estimated cost savings range between $263.49 million and $535.43 million. The corresponding midpoint estimate is roughly $400 million. This is the revised "best" estimate for the proposed regulation if helpers can replace only journeymen. With this same 1:5 ceiling, but with helpers replacing both laborers and journeymen, the estimated cost savings drop by approximately one-third—to $303.41 million on average. This supports the unions' contention of lower cost savings when helpers substitute for low skilled as well as higher skilled workers.

In light of the comments on the August proposal, the Department has decided to raise the ceiling from one helper for every five journeymen to two helpers for every three journeymen. The higher ratio will better reflect the wide diversity in practices among different types of construction and localities. The 2:3 ratio also increases the cost savings substantially.

If helpers replace journeymen only, the estimated cost savings range from $305.76 million to $640.95 million. This places the midpoint estimate of the likely cost savings with a 2:3 ceiling on the employment of helpers relative to journeymen at roughly $473.36 million. (This compares well to the PRIA estimates of $450 million in cost savings for the proposal under the assumption that helpers substitute only for journeymen.)

Once the final regulation is in effect, the more likely situation is one in which helpers would in some instances replace laborers as well as journeymen. If this is the case, the estimated cost savings range from $246.43 million to $479.89 million. This puts the average estimate of cost savings at $363.16 million assuming that helpers, in fact, replace both laborers and journeymen. This estimate also represents our "best guess" about the likely impact of the final regulation.

On the basis of this evidence, the Department has concluded that the final regulation will result in substantial cost savings and at the same time reflect industry practice, thereby providing contractors with the necessary flexibility in choosing their optimal employment mix on Davis-Bacon jobs. The final helper provision will also provide substantial cost savings for smaller contractors who predominate in the construction industry.

C. Summary

The final revisions discussed above, in conjunction with the changes to Part 5 of the Davis-Bacon rules (e.g. deletion of the requirement for submission of weekly payroll records) will result in substantial cost savings annually of $585 million for both contractors and the government while still assuring protection of local wage rates and practices. The changes will have a substantial beneficial impact on small contractors.

Copies of the complete analysis may be obtained from the Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

Conclusion

The Solicitor of Labor has determined, in accordance with Executive Order 12291, that this regulation is clearly within the authority delegated to the Secretary of Labor by the Davis-Bacon Act (40 U.S.C. 276a *et seq.*), Reorganization Plan No. 1950 (5 U.S.C. Appendix), and the Copeland Act (40 U.S.C. 276c), as well as 5 U.S.C. 301, 29 U.S.C. 259, and the laws listed in Appendix A of this part. The Solicitor, as set forth above in the discussion of the major issues, has determined that this regulation is consistent with the Congressional intent of the Davis-Bacon and related Acts that wage determinations issued under those Acts reflect the rates prevailing on similar construction in the locality, and that such wage determinations be incorporated in contracts subject to those Acts.

Dates of applicability. The provisions of this part shall be applicable only as to wage surveys completed on or after July 27, 1982. Except for § 1.6, which shall be applicable only to contracts entered into pursuant to invitations for bids issued or negotiations concluded on or after July 27, 1982. None of the revisions herein shall be applicable to any contract entered into prior to July 27, 1982.

This document was prepared under the direction and control of William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 1

Administrative practice and procedures, Government contracts, Labor, Minimum wages, Wages.

Accordingly, 29 CFR Part 1 is revised as set forth below.

Concurrent with the publication today of this final rule, the final rule previously published in the **Federal Register** on January 16, 1981 (46 FR 4306) and subsequently stayed is hereby withdrawn.

Signed at Washington, D.C. on this 25th day of May 1982.

Raymond J. Donovan,

Secretary of Labor.

Robert B. Collyer,

Deputy Under Secretary for Employment Standards.

William M. Otter,

Administrator, Wage and Hour Division.

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

Sec.

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 29 U.S.C. 259; 40 U.S.C.

276a—276a–7; 40 U.S.C. 276c; and the laws listed in Appendix A of this Part.

§ 1.1 Purpose and scope.

(a) The procedural rules in this part apply under the Davis-Bacon Act (946 Stat. 1494, as amended; 40 U.S.C. 276a—276a–7) and other statutes listed in Appendix A to this part which provide for the payment of minimum wages, including fringe benefits, to laborers and mechanics engaged in construction activity under contracts entered into or financed by or with the assistance of agencies of the United States or the District of Columbia, based on determinations by the Secretary of Labor of the wage rates and fringe benefits prevailing for the corresponding classes of laborers and mechanics employed on projects similar to the contract work in the local areas where such work is to be performed. Functions of the Secretary of Labor under these statutes and under Reorganization Plan No. 14 of 1950 (64 Stat. 1267, 5 U.S.C. Appendix), except those assigned to the Wage Appeals Board (see 29 CFR Part 7), have been delegated to the Assistant Secretary of Labor for Employment Standards who in turn has delegated the functions to the Administrator of the Wage and Hour Division, and authorized representatives.

(b) The regulations in this part set forth the procedures for making and applying such determinations of prevailing wage rates and fringe benefits pursuant to the Davis-Bacon Act, each of the other statutes listed in Appendix A, and any other Federal statute providing for determinations of such wages by the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act.

(c) Procedures set forth in this part are applicable, unless otherwise indicated, both to general wage determinations published in the **Federal Register** for contracts in specified localities, and to project wage determinations for use on contract work to be performed on a specific project.

§ 1.2 Definitions.[1]

(a)(1) The "prevailing wage" shall be the wage paid to the majority (more than 50 percent) of the laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the "prevailing wage" shall be the average of the wages paid, weighted by the total employed in the classification.

[1] These definitions are not intended to restrict the meaning of the terms as used in the applicable statutes.

(2) In determining the "prevailing wages" at the time of issuance of a wage determination, the Administrator will be guided by paragraph (a)(1) of this section and will consider the types of information listed in § 1.3 of this part.

(b) The term "area" in determining wage rates under the Davis-Bacon Act and the prevailing wage provisions of the other statutes listed in Appendix A shall mean the city, town, village, county or other civil subdivision of the State in which the work is to be performed.

(c) The term "Administrator" shall mean the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative. In the absence of the Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division is designated to act for the Administrator under this part. Except as otherwise provided in this part, the Assistant Administrator for Government Contract Wage Standards is the authorized representative of the Administrator for the performance of functions relating to the making of wage determinations.

(d) The term "agency" shall mean the Federal agency, State highway department under 23 U.S.C. 113, or recipient State or local government under Title 1 of the State and Local Fiscal Assistance Act of 1972.

§ 1.3 Obtaining and compiling wage rate information.

For the purpose of making wage determinations, the Administrator will conduct a continuing program for the obtaining and compiling of wage rate information.

(a) The Administrator will encourage the voluntary submission of wage rate data by contractors, contractors' associations, labor organizations, public officials and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area. The Administrator may also obtain data from agencies on wage rates paid on construction projects under their jurisdiction. The information submitted should reflect not only the wage rates paid a particular classification in an area, but also the type or types of construction on which such rate or rates are paid, and whether or not such rates were paid on Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements.

(b) The following types of information may be considered in making wage rate determinations:

(1) Statements showing wage rates paid on projects. Such statements should include the names and addresses of contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, whether or not the projects are Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements, the number of workers employed in each classification on each project, and the respective wage rates paid such workers.

(2) Signed collective bargaining agreements. The Administrator may request the parties to an agreement to submit statements certifying to its scope and application.

(3) Wage rates determined for public construction by State and local officials pursuant to State and local prevailing wage legislation.

(4) In making wage rate determinations pursuant to 23 U.S.C. 113, the highway department of the State in which a project in the Federal-Aid highway system is to be performed shall be consulted. Before making a determination of wage rates for such a project the Administrator shall give due regard to the information thus obtained.

(5) Wage rate data submitted to the Department of Labor by contracting agencies pursuant to 29 CFR 5.5(a)(1)(ii).

(6) Any other information pertinent to the determination of prevailing wage rates.

(c) The Administrator may initially obtain or supplement such information obtained on a voluntary basis by such means, including the holding of hearings, and from any sources determined to be necessary. All information of the types described in § 1.3(b) of this part, pertinent to the determination of the wages prevailing at the time of issuance of the wage determination, will be evaluated in the light of § 1.2(a) of this Part.

(d) In compiling wage rate data for building and residential wage determinations, the Administrator will not use data from Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements unless it is determined that there is insufficient wage data to determine the prevailing wages in the absence of such data. Data from Federal or federally assisted projects will be used in compiling wage rate data for heavy and highway wage determinations.

§ 1.4 Outline of agency construction programs.

To the extent practicable, at the beginning of each fiscal year each agency using wage determinations

under any of the various statutes listed in Appendix A will furnish the Administrator with a general outline of its proposed construction programs for the coming year indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the locations of construction. During the fiscal year, each agency will notify the Administrator of any significant changes in its proposed construction programs, as outlined at the beginning of the fiscal year. This report has been cleared in accordance with FPMR 101–11.11 and assigned interagency report control number 1671–DOL–AN.

§ 1.5 Procedure for requesting wage determinations.

(a)(1) Except as provided in paragraph (b) of this section, the Federal agency shall initially request a wage determination under the Davis-Bacon Act or any of its related prevailing wage statutes by submitting Standard Form 308 to the Department of Labor at this address:

U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Branch of Construction Wage Determinations, Washington, D.C. 20210.

The agency shall check only those classifications on the applicable form which will be needed in the performance of the work. Inserting a note such as "entire schedule" or "all applicable classifications" is not sufficient. Additional classifications needed which are not on the form may be typed in the blank spaces or on a separate list and attached to the form.

(2) In completing SF–308, the agency shall furnish:

(i) A sufficiently detailed description of the work to indicate the type of construction involved. Additional description or separate attachment, if necessary for identification of type of project, shall be furnished.

(ii) The county (or other civil subdivision) and State in which the proposed project is located.

(3) Such request for a wage determination shall be accompanied by any pertinent wage payment information which may be available. When the requesting agency is a State highway department under the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, such agency shall also include its recommendations as to the wages which are prevailing for each classification of laborers and mechanics on similar construction in the area.

(b) Whenever the wage patterns in a particular area for a particular type of construction are well settled and whenever it may be reasonably anticipated that there will be a large volume of procurement in that area for such a type of construction, the Administrator, upon the request of a Federal agency or in his/her discretion, may publish a general wage determination in the **Federal Register** when, after consideration of the facts and circumstances involved, the Administrator finds that the applicable statutory standards and those of this part will be met. If there is a general wage determination applicable to the project, the agency may use it without notifying the Department of Labor, *provided,* that questions concerning its use shall be referred to the Department of Labor in accordance with § 1.6(b).

(c) The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. An agency should anticipate that such processing in the Department of Labor will take at least 30 days.

§ 1.6 Use of effectiveness of wage determinations.

(a)(1) Project wage determinations initially issued shall be effective for 180 calendar days from the date of such determinations. If such a wage determination is not used in the period of its effectiveness it is void. Accordingly, if it appears that a wage determination may expire between bid opening and contract award (or between initial endorsement under the National Housing Act or the execution of an agreement to enter into a housing assistance payments contract under section 8 of the U.S. Housing Act of 1937, and the start of construction) the agency shall request a new wage determination sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award but after bid opening (or before the start of construction, but after initial endorsement under the National Housing Act, or before the start of construction but after the execution of an agreement to enter into a housing assistance payments contract under Section 8 of the U.S. Housing Act of 1937), the head of the agency or his or her designee may request the Administrator to extend the expiration date of the wage determination in the bid specifications instead of issuing a new wage determination. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension of the expiration date of the determination is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all of the circumstances, including an examination to determine if the previously issued rates remain prevailing. If the request for extension is denied, the Administrator will proceed to issue a new wage determination for the project.

(2) General wage determinations issued pursuant to § 1.5(b) and which are published in the **Federal Register,** shall contain no expiration date.

(b) Contracting agencies are responsible for insuring that only the appropriate wage determination(s) are incorporated in bid solicitations and contract specifications and for designating specifically the work to which such wage determinations will apply. Any question regarding application of wage rate schedules shall be referred to the Administrator, who shall give foremost consideration to area practice in resolving the question.

(c)(1) Project and general wage determinations may be modified from time to time to keep them current. A modification may specify only the items being changed, or may be in the form of a supersedeas wage determination, which replaces the entire wage determination. Such actions are distinguished from a determination by the Administrator under paragraphs (d), (e) and (f) of this section that an erroneous wage determination has been issued or that the wrong wage determination or wage rate schedule has been utilized by the agency.

(2)(i) All actions modifying a project wage determination received by the agency before contract award (or the start of construction where there is no contract award) shall be effective except as follows:

(A) In the case of contracts entered into pursuant to competitive bidding procedures, modifications received by the agency less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available before bid opening, to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if the modification is received after bid opening.

(B) In the case of projects assisted under the National Housing Act, modifications shall be effective if received prior to the beginning of

construction or the date the mortgage is initially endorsed, whichever occurs first.

(C) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, modifications shall be effective if received prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is executed, whichever occurs first.

(ii) Modifications to project wage determinations and supersedeas wage determinations shall not be effective after contract award (or after the beginning of construction where there is no contract award).

(iii) Actual written notice of a modification shall constitute receipt.

(3) All actions modifying a general wage determination shall be effective with respect to any project to which the determination applies, if published before contract award (or the start of construction where there is no contract award), except as follows:

(i) In the case of contracts entered into pursuant to competitive bidding procedures, modifications published less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available before bid opening to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if the modification is published after bid opening.

(ii) In the case of projects assisted under the National Housing Act, modifications shall be effective if published prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(iii) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, modifications shall be effective if published prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is signed, whichever occurs first.

(iv) If under paragraph (c)(3)(i) of this section the contract has not been awarded within 90 days after bid opening, or if under paragraph (c)(3) (ii) or (iii) of this section construction has not begun within 90 days after initial endorsement or the signing of the agreement to enter into a housing assistance payments contract, any modifications published in the **Federal Register** prior to award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract unless the head of the agency or his or her designee requests and obtains an extension of the 90-day period from the Administrator. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all the circumstances.

(v) A modification to a general wage determination is "published" within the meaning of this section on the date of publication in the **Federal Register**, or on the date the agency receives actual written notice of the modification from the Department of Labor, whichever occurs first.

(vi) Modifications or supersedeas wage determinations to an applicable general wage determination published after contract award (or after the beginning of construction where there is no contract award) shall not be effective.

(d) Upon his/her own initiative or at the request of an agency, the Administrator may correct any wage determination, without regard to paragraph (c) of this section, whenever the Administrator finds such a wage determination contains clerical errors. Such corrections shall be included in any bid specifications containing the wage determination, or in any on-going contract containing the wage determination in question, retroactively to the start of construction.

(e) Written notification by the Department of Labor prior to the award of a contract (or the start of construction under the National Housing Act, under section 8 of the U.S. Housing Act of 1937, or where there is no contract award) that (1) there is included in the bidding documents or solicitation the wrong wage determination or the wrong schedule or that (2) a wage determination is withdrawn by the Department of Labor as a result of a decision by the Wage Appeals Board, shall be effective immediately without regard to paragraph (c) of this section.

(f) The Administrator may issue a wage determination after contract award or after the beginning of construction if the agency has failed to incorporate a wage determination in a contract required to contain prevailing wage rates determined in accordance with the Davis-Bacon Act, or has used a wage determination which by its terms or the provisions of this part clearly does not apply to the contract. Further, the Administrator may issue a wage determination which shall be applicable to a contract after contract award or after the beginning of construction when it is found that the wrong wage determination has been incorporated in the contract because of an inaccurate description of the project or its location in the agency's request for the wage determination. Under any of the above circumstances, the agency shall either terminate and resolicit the contract with the valid wage determination, or incorporate the valid wage determination retroactive to the beginning of construction through supplemental agreement or through change order, *provided* that the contractor is compensated for any increases in wages resulting from such change. The method of incorporation of the valid wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable procurement law.

(g) If Federal funding or assistance under a statute requiring payment of wages determined in accordance with the Davis-Bacon Act is not approved prior to contract award (or the beginning of construction where there is no contract award), the agency shall request a wage determination prior to approval of such funds. Such a wage determination shall be issued based upon the wages and fringe benefits found to be prevailing on the date of award or the beginning of construction (under the National Housing Act, under section 8 of the U.S. Housing Act of 1937 or where there is no contract award), as appropriate, and shall be incorporated in the contract specifications retroactively to that date, *provided*, that upon the request of the head of the agency in individual cases the Administrator may issue such a wage determination to be effective on the date of approval of Federal funds or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent injustice or undue hardship, *provided further* that the Administrator finds no evidence of intent to apply for Federal funding or assistance prior to contract award or the start of construction, as appropriate.

§ 1.7 Scope of consideration.

(a) In making a wage determination, the "area" will normally be the county unless sufficient current wage data (data on wages paid on current projects or, where necessary, projects under construction no more than one year prior to the beginning of the survey or the request for a wage determination, as

appropriate) is unavailable to make a wage determination.

(b) If there has not been sufficient similar construction within the area in the past year to make a wage determination. Wages paid on similar construction in surrounding counties may be considered, *provided* that projects in metropolitan counties may not be used as a source of data for a wage determination in a rural county, and projects in rural counties may not be used as a source of data for a wage determination for a metropolitan county.

(c) If there has not been sufficient similar construction in surrounding counties or in the State in the past year, wages paid on projects completed more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate, may be considered.

(d) Classifications and wage rates will be issued for identifiable "classes of laborers and mechanics." Semi-skilled classifications of helpers will be issued when the classifications are identifiable in the area. The use of helpers, apprentices and trainees is permitted in accordance with Part 5 of this subtitle.

§ 1.8 Reconsideration by the Administrator.

Any interested person may seek reconsideration of a wage determination issued under this part or of a decision of the Administrator regarding application of a wage determination. Such a request for reconsideration shall be in writing accompanied by a full statement of the interested person's views and any supporting wage data or other pertinent information. The Administrator will respond within 30 days of receipt thereof, or will notify the requestor within the 30 day period that additional time is necessary.

§ 1.9 Review by Wage Appeals Board.

Any interested person may appeal to the Wage Appeals Board for a review of a wage determination or its application made under this part, after reconsideration by the Administrator has been sought pursuant to § 1.8 and denied. Any such appeal may, in the discretion of the Wage Appeals Board, be received, accepted, and decided in accordance with the provisions of 29 CFR Part 7 and such other procedures as the Board may establish.

Appendix A

Statutes Related to the Davis-Bacon Act Requiring Payment of Wages at Rates Predetermined by the Secretary of Labor

1. The Davis-Bacon Act (secs. 1–7, 46 Stat. 1494, as amended; Pub. L. 74–403, 40 U.S.C. 276a–276a–7).

2. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).

3. Housing Act of 1950 (college Housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).

4. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86–372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).

5. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).

6. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).

7. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).

8. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).

9. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91–230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92–318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.

10. The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113).

11. Indians Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).

12. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).

13. Rehabilitation Act of 1973 (sec. 306(b)(5), 87 Stat. 384, 29 U.S.C. 776(b)(5)).

14. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 83 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).

15. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).

16. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).

17. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

18. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).

19. National Visitors Center Facilities Act of 1968 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

20. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).

21. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 306(h)(2) thereof, 83 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

22. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

23. Health Professions Education Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2256; 42 U.S.C. 293a(c)(7)).

24. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 364; 42 U.S.C. 296a(b)(5)).

25. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

26. Safe Drinking Water Act (sec. 2(a), see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j–9(e)).

27. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o–3(b)(1)(H)).

28. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

29. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

30. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

31. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

32. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c–3).

33. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

34. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

35. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

36. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

37. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

38. Older Americans Act of 1965 (sec. 502, Pub. L. 89–73, as amended by sec. 501, Pub. L. 93–29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

39. Public Works and Economic Development Act of 1965 (sec. 712, 79 Stat. 575 as amended; 42 U.S.C. 3222).

40. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

41. New Communities Act of 1968 (sec. 410.82 Stat. 516; 42 U.S.C. 3909).

42. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

43. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

44. Housing and Community Development Act of 1974 (secs. 110, 802(g), 83 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

45. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

46. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).

47. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

48. Energy Conservation and Production Act (sec. 45(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

49. Solid Waste Disposal Act (sec. 2, 90 Stat. 2828; 42 U.S.C. 6979).

50. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

51. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

52. Highway speed ground transportation study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

53. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

54. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281(i)).

55. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat; 40 U.S.C. 682(b)(4)).

Note.—Repealed Dec. 9, 1969 and labor standards incorporated in sec. 1–1431 of the District of Columbia Code.

56. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89–694, but not in the United States Code.

57. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87–328) (considered a statute for purposes of this part but not in the United States Code).

58. Energy Security Act (Sec. 175(c), Pub. L. 96–294, 94 Stat. 611; 42 U.S.C. 8701 note).

Appendix B

Boston Region

For the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, JFK Federal Building, Government Center, Room 1612C, Boston, Massachusetts 02203 (telephone: 617–223–5565).

New York Region

For the States of New Jersey and New York and for the Canal Zone, Puerto Rico, and the Virgin Islands:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 1515 Broadway, Room 3300, New York, New York 10036 (telephone: 212–399–5443).

Philadelphia Region

For the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia, and the District of Columbia:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Gateway Building, Room 15220, 3535 Market Street, Philadelphia, Pennsylvania 19104 (telephone: 215–596–1193).

Atlanta Region

For the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 1371 Peachtree Street, N.E., Room 305, Atlanta, Georgia 30309 (telephone: 404–881–4801).

Chicago Region

For the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 230 South Dearborn Street, 8th Floor, Chicago, Illinois 60604 (telephone: 312–353–7249).

Dallas Region

For the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 555 Griffin Square Building, Young and Griffin Streets, Dallas, Texas 75202 (telephone: 214–767–6891).

Kansas City Region

For the States of Iowa, Kansas, Missouri, and Nebraska:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 2000, 911 Walnut Street, Kansas City, Missouri 64106 (telephone: 816–374–5386).

Denver Region

For the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 1440, 1961 Stout Street, Denver, Colorado 80294 (telephone: 304–837–4613).

San Francisco Region

For the States of Arizona, California, Hawaii, and Nevada:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 450 Golden Gate Avenue, Room 10353, San Francisco, California 94102 (telephone: 415–556–3592).

Seattle Region

For the States of Alaska, Idaho, Oregon, and Washington:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 4141, 909 First Avenue, Seattle, Washington 98174 (telephone: 206–442–1916).

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Part VI

Department of Labor

Wage and Hour Division, Employment Standards Administration

Office of the Secretary

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act); Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

Office of the Secretary

29 CFR Part 5

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final text of regulations, 29 CFR Part 5, Subpart A, on labor standards applicable to contracts for federally financed and assisted construction subject to the Davis-Bacon and Related Acts and contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA). Changes have been made to eliminate the requirement that contractors and subcontractors submit weekly payrolls to the appropriate Federal agencies, and to provide for the increased use of helpers on covered projects. In addition, the definition of the "site of the work" has been revised for clarification.

DATES: Effective date: July 27, 1982, except § 5.5(a)(1) (ii), (iv) and (a)(3)(i), which contain information collection requirements which are under review at OMB. See Supplementary Information for dates of applicability.

FOR FURTHER INFORMATION CONTACT: William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: 202–523–8305.

SUPPLEMENTARY INFORMATION: On December 28, 1979, a proposal was published in the **Federal Register** (44 FR 77080) to make certain revisions to Subpart A of Regulations, 29 CFR Part 5, Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act). The purpose of this proposal was to revise, update, and clarify this subpart.

On January 16, 1981, the regulation was published in the **Federal Register** (46 FR 4380) as a final rule with a scheduled effective date of February 17, 1981. However, pursuant to the President's Memorandum of January 29, 1981, the Department published a notice in the **Federal Register** on February 6, 1981 (46 FR 11253), delaying implementation of this regulation until March 30, 1981. The Department subsequently delayed the implementation of this regulation until August 15, 1981 in order to permit reconsideration of the rule pursuant to Executive Order 12291. See 46 FR 18973 (March 27, 1981); 46 FR 23739 (April 28, 1981); 46 FR 33514 (June 30, 1981); and 46 FR 36140 (July 14, 1981).

On August 14, 1981, a new regulatory proposal developed in accordance with Executive Order 12291 was published in the **Federal Register** (46 FR 41456) and the previously published rule was further postponed until action could be taken on the new proposal. (See 46 FR 41043.)

Interested persons were afforded the opportunity to submit comments to the Wage and Hour Division within 60 days after publication of the proposal in the **Federal Register.** Comments were received from approximately 2,200 interested parties, including members of Congress, contracting agencies, contractor associations, contractors, labor organizations, State and local governmental agencies, business organizations, and individuals. Many comments were received either supporting or opposing the proposal in general. More than 1,000 comments (mostly from contractors and contractor associations) were directed solely to the issue of whether the use of helpers should be limited to a ratio to journeymen of 1:5, as had been proposed.

Contractor associations and business organizations submitting comments included the Associated General Contractors of America (AGC), the Associated Builders and Contractors, Inc. (ABC), the National Association of Home Builders (NAHB), the Chamber of Commerce of the United States (C of C), the National Association of Manufacturers (NAM), the Business Roundtable, the National Federation of Independent Business, the National Utility Contractors Association (NUCA), the Sheet Metal and Air Conditioning Contractors' National Association, Inc., the American Road and Transportation Builders Association, the National League of Cities (NLC), the National Association of Counties, the Council of State Housing Agencies, the National Sand and Gravel Association, the National Ready Mixed Concrete Association, and others. Labor unions and organizations commenting on the proposal included the Building and Construction Trades Department of the American Federation of Labor-Congress of Industrial Organizations (BCTD), the Laborers' International Union of North America (LIUNA), the United Brotherhood of Carpenters and Joiners of America (UBC), the International Brotherhood of Electrical Workers (IBEW), the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry (UA), the International Brotherhood of Teamsters (Teamsters), the International Association of Bridge, Structural and Ornamental Iron Workers (Iron Workers), the International Union of Operating Engineers (IUOE), the United Automobile Workers of America (UAW), the Sheet Metal Workers' International Association (SMW), the Operative Plasterers' and Cement Masons' International Association (OPCM), the International Brotherhood of Painters and Allied Trades (PAT), and others. Among those Federal agencies submitting comments were the Department of Defense (DOD), the Department of Transportation (DOT), the Department of Energy (DOE), the National Aeronautics and Space Administration (NASA), the U.S. Postal Service (USPS), the General Services Administration (GSA), and the Small Business Administration (SBA).

Discussion of Major Comments

The following is an analysis of all the principal comments received and the corresponding changes, if any, made to the proposed rule. Each submission has been thoroughly reviewed, and each criticism and suggestion has been given careful consideration. For each section and, where appropriate, subsection of the final rule, the analysis contains a description of the major comments, the Department's conclusions regarding those comments, and the substantive changes herein adopted.

Section 5.2(1)—Definition of "Site of Work"

The ABC, AGC, several other contractor associations, individual contractors, and DOT opposed the proposed definition of "site of work", stating it was an expansion of statutory coverage and, in addition, was confusing and subject to different interpretations. They recommended that the definition be limited to the physical places where the construction work is to be performed. Some contractor associations suggested excluding any commercial material supplier or other similar operation located near, but not

on, the actual location of the construction project if the operation is established prior to the start of contract work.

Labor organizations, including the BCTD, the Teamsters, and the UAW, commented that the proposed definition unduly restricted Davis-Bacon coverage by placing limitations on coverage of facilities not directly on the construction site, thus depriving workers at such facilities of labor standards protections.

The Department's proposal would codify its longstanding interpretation of "site of work" in the regulations. Necessarily, the provision embodies some flexibility in order to allow for its application to the varied fact situations encountered in particular cases.

However, in response to industry comments, this section has been clarified, explicitly providing that operations of a "commercial supplier" or "materialman" established by the supplier of the materials prior to the opening of bids and not located at the actual site of the project are not covered by the Act.

Sections 5.2(n)(4), 5.5(a)(1)(ii)(A), and 5.5(a)(4)(iv)—Helpers

Many commentators, including the ABC, AGC, NAM, NAHB, the Business Roundtable, the C of C, and individual contractors, generally favored the proposal to increase recognition of a semi-skilled helper classification; however, they opposed the ratio limitations on their use contained in the proposal at § 5.5(a)(4)(iv). While some of these commentators argued that the use of helpers varies too greatly by craft, job needs, and geographic area to establish a fixed nationwide ratio, a number simply recommended a more liberal ratio. The AGC also opposed the requirement in the conformance procedures in § 5.5(a)(1)(ii)(A) that helper wage rates must bear a "reasonable relationship" to the rates on the wage determination.

The building trades unions and some State and local governmental agencies opposed increased recognition of helpers on the grounds that this would undermine formally established apprentice and trainee programs to the detriment of minorities and unskilled workers, and would lead to shortages of qualified journeymen.

Several commentators expressed the view that the proposed definition in § 5.2(n)(4) was too broad to distinguish helpers' duties from those of a journeyman or apprentice. A parallel concern, particularly articulated by the Laborers' International Union, is that the proposed definition is essentially a statement of traditional laborers' work, and consequently could result in the misclassification of workers into lower paying jobs.

The Department currently recognizes a helper classification only where it is a separate and distinct class of workers, which prevails in the area, and where the helpers' scope of duties can be differentiated from those of journeymen. When the use of helpers has been permitted under these criteria, no ratio as to their use has been applied.

Increased recognition of helpers, both helpers working in a particular craft and cross-craft or general utility helpers, reflects the widespread industry practice of employing semi-skilled workers (with some overlap between their duties and those of journeymen) on construction projects. The very large number of comments received reflects a wide acceptance of the proposed helper definition. Section 5.2(n)(4) is therefore adopted as proposed.

However, in view of the concerns expressed that the proposed ratio of one helper to five journeymen did not give adequate consideration to the number of helpers used in the industry, the Department has concluded that a more liberal ratio would be consistent with the statutory intent and provide training opportunities.

Accordingly, the ratio has been changed to permit not more than two helpers for every three journeymen (or not more than 40 percent of the total number of helpers and journeymen) in the contractor's workforce, as illustrated by the following chart:

Journeymen	Helpers	Total [1]
1	0	1
2	0	2
2	1	3
3	1	4
3	2	5
4	2	6
5	2	7
5	3	8
6	3	9
6	4	10
7	4	11
8	4	12
8	5	13
9	5	14
9	6	15
10	6	16

[1] Helpers and journeymen.

To assure that the ratio does not disrupt existing established local practices in areas where wage determinations currently contain helper classifications without restriction as to the number permitted, interested parties (which would include contracting agencies), prior to bid opening on a contract, may request a variance from the ratio provision pursuant to § 5.14 of the regulations. Such variances will be considered for the applicable helper classification(s) upon a showing that the wage determination for the type of construction in effect in the area prior to the effective date of these regulations contains one or more helper classifications, and that there was a practice in the area of utilizing such helpers on Davis-Bacon projects in excess of a ratio of two to every three journeymen in the classification.

With respect to the comment regarding conformance of wage rates, it is fundamental to this process that a reasonable relationship be maintained to the wages for the various job classifications on the wage determination. Accordingly, § 5.5(a)(1)(ii)(A) is adopted without change. (See also the related changes proposed to 29 CFR Part 1 regarding the issuance of helper classifications on wage determinations and the discussion of comments received thereon.)

Section 5.5(a)(1)(ii)(B)—Review of Conformances Agreed to by the Interested Parties

No comments were received concerning the conformance procedures. However, as a result of DOL's review of the proposal, it has been determined that a modification is appropriate to insure consistency in procedures contained in § 5.5(a)(1)(ii) (B) and (C). Ordinarily, DOL expects to complete review of proposed conformance actions agreed to by the interested parties within a 30 day period as provided in the proposed regulations. However, in a few instances, more time is needed, especially where an area practice survey is necessary to ascertain prevailing wage relationships and/or the proper classification of the unlisted classes. Accordingly, the language of this section is amended to allow DOL (with notification to the agency) additional time to complete a review.

Section 5.5 (a)(2) and (b)(3)—Cross-Withholding

The ABC, the NAHB, other contractor associations and some State highway agencies opposed the provisions which would allow agencies to withhold contract monies due a contractor from contracts other than those on which the alleged violations occurred if necessary to satisfy Davis-Bacon and Contract Work Hours and Safety Standards Act underpayments ("cross-withholding"). These groups contended that neither statute authorizes cross-withholding, citing *Whitney Bros. Plumbing and Heating* v. *United States* (224 F. Supp. 860 (D. Alaska 1963)). They further contended that these proposals would, in effect, redelegate withholding

authority from the contracting agency to the DOL.

The BCTD and other labor organizations opposed the proposed limitation on cross-withholding to those contracts which involve the same prime contractors as unduly restrictive.

Both the Davis-Bacon Act and the CWHSSA require that all covered contracts contain language to permit the contracting agency to withhold funds to satisfy unpaid wages. Because neither statute specifically provides for cross-withholding, agencies generally have refrained from doing so. Accordingly, many contractors and subcontractors have escaped payment of back wages because violations were not discovered until after final payment on the contract had been made.

The decision in *Whitney Bros.* precluded withholding from another contract under the language of the contract clause in the regulations as they existed at that time. In Decision No. B-177554 (March 22, 1973), the GAO recommended that the Department adopt regulations specifically permitting cross-withholding. In addition, GAO commented in favor of the cross-withholding provisions contained in the stayed DOL regulations of January 16, 1981, which were substantially identical to the current proposal.

While the Department recognizes that the contracting officer undertakes the actual withholding of payment of contract funds, it is clear that to require the agency to take withholding action upon request of DOL is not a redelegation of the contracting agency's authority. Rather, it is simply the exercise of DOL authority under Reorganization Plan No. 14 of 1950 in order to accomplish its enforcement and oversight responsibilities.

With respect to the comments by labor organizations that the cross-withholding provisions are unduly restrictive, we note that the provisions are so structured because the Government has no direct contractual relationship with subcontractors, and because prime contractors are responsible for violations committed by their subcontractors.

Accordingly, no substantive changes are being made in these sections. However, § 5.5(b)(3) is amended to correspond to the language in § 5.5(a)(2), which specifically states that cross-withholding is only permitted on contracts with the same prime contractor.

Section 5.5(a)(3)(ii) and (iii)—Elimination of Weekly Payroll Submission Requirement

Numerous commentators, including ABC, AGC, several regional and State contractor associations, and the Postal Service commented that eliminating the submission of weekly payroll reports would result in significant construction cost savings, alleviate unnecessary paperwork burdens, simplify contract administration, and still comply with the requirements of the Copeland Act. However, ABC disagreed with the proposal to permit agencies, at their discretion, to request payroll reports. It argued that existing recordkeeping, inspection, and posting requirements are sufficient to ensure compliance; it also maintained that the proposed provision would only cause confusion among contractors as to what their obligations are because of possible differing reporting requirements from one agency to another. Some commentators suggested requiring the submission of the compliance statements only at certain points during the course of the project, such as at the beginning and the end of the project.

The BCTD, UAW, Teamsters, and several other labor organizations, a few contractor associations, GSA, and several State and local contracting agencies opposed the elimination of the weekly payroll submission on the grounds that its elimination would make it more difficult for agencies and DOL to monitor compliance with the Davis-Bacon and Copeland Acts, while increasing enforcement costs. They further contended that weekly payroll submissions are not an onerous recordkeeping burden on contractors since the records must be kept anyway, and questioned the Department's authority to eliminate what they regard as a statutory requirement of the Copeland Act.

The Department believes that the provisions of the Copeland Act requiring a weekly statement with respect to the wages paid each employee during the preceding week can be legally satisfied by the weekly submission of a statement certifying that the wages paid are in compliance with the Act. Further, this proposed change is in accord with the Department's mandate, under the Paperwork Reduction Act, to reduce unnecessary paperwork burdens on the public wherever possible.

With respect to the arguments regarding the provision allowing contracting agencies to request payroll submissions at their discretion, the Department recognizes the significant role of the agencies in assuring compliance with the Davis-Bacon and Copeland Act standards. Therefore, we believe it necessary and appropriate to provide a mechanism whereby the procuring agencies can obtain payroll information where deemed necessary to insure compliance. However, § 5.6(a)(3) of the final regulation has been revised to provide that requests for payroll submissions will only be made as part of a specific compliance check or enforcement action. Clarifying changes have also been made to § 5.5(a)(3).

With regard to the comments that enforcement would be more difficult with the elimination of weekly payroll submissions, the regulations continue to require the maintenance of payrolls and basic records by the contractor. They further require that such records be submitted for inspection on request of the agency or the Department of Labor. Failure to submit such records upon request may be grounds for debarment. In addition, the regulations specify that falsification of the weekly statement of compliance may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code. The Department feels that these requirements are sufficient to ensure enforcement of the Act.

It should be noted that notwithstanding the change in reporting, prime contractors continue to be responsible for insuring that all laborers and mechanics employed on the contract are paid in compliance with the Davis-Bacon and Related Acts. Accordingly, since subcontractors will only be required to submit a weekly statement of compliance, and will no longer be required to submit copies of their payrolls each week, prime contractors may wish to provide in their subcontracts for the examination of subcontractor payrolls.

Section 5.5(a)(9)—Disputes Concerning Labor Standards

Several commentators objected to the portion of § 5.5(a)(9) which states that disputes arising out of the labor standards provisions of the contract are not subject to the general disputes clause of the contract, but rather to the provisions of Parts 5, 6, and 7 of this Title. Federal agencies commented that the provision conflicts with the authority of the contracting officer as set forth in the Contract Disputes Act of 1978 (Pub. L. 95–563, 41 U.S.C. Sec. 601 *et seq.*). Reorganization Plan No. 14 of 1950, as explained in the President's message accompanying the plan, invests in the Secretary of Labor the responsibility "to

coordinate the administration of laws relating to wages and hours on Federally-financed or assisted projects by prescribing standards, regulations, and procedures to govern the enforcement activities of the various Federal agencies." With respect to the Contract Disputes Act of 1978, section 14 of that statute sets forth specific amendments to existing statutes. Significantly, no change, repeal, amendment, or other reference was made to the Davis-Bacon and Related Acts, the Contract Work Hours and Safety Standards Act, the Copeland Act, or Reorganization Plan No. 14 of 1950. Therefore, in our view, the Department's authority to resolve disputes under these statutes and Reorganization Plan No. 14 is not impinged by section 14 of the Contract Disputes Act. This conclusion is corroborated by section 6(a) of the Contract Disputes Act, which states in pertinent part, that "the authority of this subsection shall not extend to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another Federal agency is specifically authorized to administer, settle, or determine."

To insure effective and consistent administration, the authority to resolve labor disputes should reside in the Department of Labor, since it is the agency which has the primary responsibility for protecting labor standards and the expertise in the law and the regulations. It should be noted that the General Accounting Office stated previously that it had no objection to the adoption of this provision. Accordingly, this section is hereby adopted.

Section 5.5(a)(10)—Certification of Eligibility

ABC and DOT opposed the provisions prohibiting contract award to a potential contractor where another person or firm which has been debarred pursuant to section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) has "an interest" in a bidder's firm, asserting that the phrase "an interest" is too vague and that the regulation should prohibit contract award only where a person or firm has a "controlling" or "substantial" interest.

Section 3(a) of the Davis-Bacon Act prohibits the award of contracts to a firm in which another person or firm debarred because of violations of the Act has "an interest", while § 5.12(a)(1) of the regulations prohibits award if a person or firm, debarred for violations of a related Act, has "a substantial interest" in the potential contractor's firm. In both cases, the intent is to prohibit debarred persons or firms from evading the ineligibility sanctions by using another legal entity to obtain Government contracts.

Although the language of the Davis-Bacon Act requires debarment of any firm in which a debarred contractor has an "interest", the regulation, as drafted, is not intended to prohibit bidding by a potential contractor where a debarred person or firm holds only a nominal interest in the potential contractor's firm. Accordingly, no changes are made in this section. Decisions as to whether "an interest" exists will be made on a case-by-case basis considering all relevant factors.

In addition to the above, minor editorial and language changes have been made in some sections.

Classification

This rule would not appear to require a regulatory impact analysis under Executive Order 12291 since the changes will result in substantial cost savings annually for both contractors and the Government while still assuring protection of local wage rates and practices. However, because of the importance to the Government and the public of the issues involved, the Department has concluded that the regulation should be deemed a "major rule" for purposes of the Executive Order. It has been determined, in accordance with Executive Order 12291, that these changes are the most cost-effective regulatory alternatives consistent with the purpose of the statute.

Summary of Final Regulatory Impact and Regulatory Flexibility Analysis

The Department has prepared its final regulatory impact analysis to identify and quantify the cost impact of the final Davis-Bacon regulations and various alternatives that were explored and to inform the public of the economic considerations behind final revisions in accordance with Executive Order 12291.

The final analysis builds upon a preliminary regulatory impact analysis (PRIA) which accompanied the proposed revisions published on August 14, 1981 (46 FR 41444). The PRIA estimated that the proposed changes would result in substantial cost savings amounting to at least $670 million annually to both contractors and procuring agencies, while still assuring protection of local wage rates and practices. The Department requested comments and additional information on all economic assumptions used in the analysis, as well as any alternative suggestions designed to achieve the objectives of the Davis-Bacon and Related Acts at lower costs. The Department received numerous comments on the PRIA estimates and its economic assumptions. The Department has carefully reviewed all of these comments in finalizing the regulations and has incorporated these considerations, as appropriate, into the final regulatory impact analysis (FRIA).

The final regulation must also consider the Regulatory Flexibility Act of 1980. This Act requires agencies to prepare regulatory flexibility analyses and to develop flexible alternatives whenever possible in drafting regulations that will have "a significant economic impact on a substantial number of small entities." The analysis summarized below meets the requirements set forth for assessing the economic impact of the final changes in the Davis-Bacon regulations on small entities as required under the Regulatory Flexibility Act.

A. Cost Savings from Eliminating Weekly Payroll Submissions

Current DOL regulations implementing the Copeland Act in 29 CFR Part 5 require contractors to submit a statement of compliance together with a copy of the weekly payroll. Contractors have raised numerous concerns that the requirements for weekly submissions of payroll records impose substantial administrative burdens on contractors, while contributing little to enforcement of the Davis-Bacon Act.

The January 16 regulation made it clear that contractors were allowed to submit payroll records in any form, thereby eliminating the costs of transcribing payroll data onto the optional government forms. The August proposal went even further—eliminating payroll submissions entirely, requiring only a weekly certified "Statement of Compliance". However, under the proposal agencies were permitted to request submissions of payrolls where necessary. The Department also considered eliminating all weekly submissions, but concluded that the Copeland Act requires that contractors submit each week a statement on the wages paid to each employee during the preceding week. The proposed regulation thus conformed with the recommendations of two study groups of the Commission on Government Procurement.* The PRIA estimated the cost of compliance with these weekly payroll submissions at $100 million.

Contractor associations generally supported these changes and the cost estimates. However, ABC argued that

* See GAO, *The Davis-Bacon Act Should be Repealed*, April 1979, pp. 78–82.

the cost savings were only $50 million and further that the Department should eliminate individual agency discretion to request payroll reports because it would only cause confusion among contractors as to what their obligations are because of possible differing reporting requirements from one agency to another. Construction unions commenting on the preliminary analysis challenged the reliability of these estimates, arguing that the true savings are far lower. They also found the analysis inadequate for ignoring the enforcement benefits of the payroll reporting requirement and argued that elimination of payrolls would make it difficult for agencies and DOL to monitor compliance with the Davis-Bacon and Copeland Acts, while increasing compliance costs. However, the PRIA in fact acknowledged the biases in the estimates of cost savings. Even allowing for these biases, the likely cost savings would still appear substantial. Moreover, the union data on back wages recovered through Davis-Bacon enforcement actions using payroll submissions leads us to conclude that the payroll reporting requirement is an inefficient enforcement tool. Most of this amount would be recovered even without the reporting requirement since retention of payrolls is mandatory and they must be made available upon request.

After careful review of the evidence, the Department has concluded that this proposed change meets the Administration's objective of eliminating unnecessary reporting burdens imposed on the public and should be adopted. However, the final regulation has been revised to provide that requests for payroll submission will only be made as part of a specific compliance check or enforcement action. These final changes recognize the fact that weekly submissions of payrolls are simply not cost-effective since these forms are infrequently used by many Federal agencies. The final regulation should substantially eliminate the $100 million in administrative costs involved.

While we have made no independent estimate of the administrative costs associated with this provision because of data limitations, several estimates of the costs of compliance with the Davis-Bacon and Copeland Act reporting requirements are available.

A previous DOL estimate uses a 5.5 million estimate of the annual burden hours for compliance with the Paperwork Reduction Act. Assuming a $5.00 hourly wage rate for a bookkeeper for these burden hours, this procedure produces a $27.5 million estimate of the costs of Davis-Bacon reporting requirements.

A second estimate comes from a 1972 survey by the Associated General Contractors of America (AGC) of its membership to estimate the administrative costs of the payroll reporting requirements of the Davis-Bacon Act. Thirty-four respondents reported estimates of administrative costs per million dollars of contract price. On the basis of this information, AGC estimated that .5 percent of the overall cost of Davis-Bacon contracts was accounted for by the payroll reporting and recordkeeping requirements. Applying this estimate to the FY 1982 estimated value of Federal construction of $30.3 billion yields an annual cost saving of nearly $152 million.

This study provides an upperbound estimate of the resulting cost savings since it includes other recordkeeping items such as the maintenance and storage of detailed payrolls on each employee for specified time periods and the prominent posting of wages paid each worker at their work site. However, the costs of weekly payroll submissions were certainly a large component of these administrative costs. Moreover, on the basis of GAO's estimate of about 600,000 prime and subcontracts annually, this estimate translates into about $250 per contract, a not unreasonable estimate of the costs of compliance with this provision. Finally, this survey refers to 1973 administrative costs and is not adjusted to reflect subsequent increases in costs. GAO's estimate which is based on this survey adjusts the AGC figure downward to $100 million to reflect the likely survey biases. This appears to be an appropriate estimate of the likely reduction in administrative costs from eliminating the weekly payroll submissions.

Much of these cost savings would be passed on to the 53,665 smaller contractors with fewer than 20 employees involved in construction work. These small contractors account for 56 percent of government contractors, but only about 15 percent of government-owned construction receipts. Since both the AGC and ABC surveys indicated that administrative costs were relatively higher for these small contractors, we used both percentages to estimate the impact of eliminating weekly payroll submissions on smaller contractors. The resulting estimated cost savings to these small contractors range from $15 million to $56 million annually.

B. Cost Impact of the Expanded Issuance of Semi-Skilled Classifications

The Department has long permitted exceptions from predetermined Davis-Bacon rates set for a craft classification for apprentices and trainees who are in approved programs. The Department has also recognized a helper classification in some areas under certain well-defined situations where (1) it constitutes a separate and distinct class of workers (i.e., the scope of duties of the helper is defined and can be differentiated from journeyman duties); (2) the particular helper classification prevails in the area; and (3) the helper is not used as an informal apprentice or trainee.

During its review, the Department concluded that the current policies regarding semi-skilled crafts do not adequately reflect construction industry practices, in particular, the widespread use of helpers to perform certain craft tasks. The proposed revisions allowed for the issuance of semi-skilled classifications such as helpers or other subclassifications of a journeyman class that could be identified in the locality. Helpers were permitted as long as their use did not exceed a ratio of one helper to five journeymen. The proposal further allowed contractors to conform rates after award for helper classifications which were not issued in the wage determinations, but which the contractor felt were appropriate to performing the contract work so long as those classifications were currently utilized in the locality. The PRIA estimated that these proposed changes would result in significant cost savings of about $450 million in Fiscal Year 1982.

Many commentators viewed these cost estimates as excessively high. Contractor associations welcomed the helper classifications, but criticized the 1:5 ratio as an artificial rule that would prohibit the following of area practices. These groups argued that the ratio, coupled with the considerably lower ceilings specified by collectively bargained contracts, would significantly dampen the cost savings—to about $200 million annually. Construction unions, on the other hand, did not comment on the ratio *per se*, but instead focused on the PRIA assumption that each helper employed on Davis-Bacon projects would replace one journeyman. They argued that the analysis overstated the cost savings because it ignored the low productivity of helpers relative to journeymen and the likelihood that helpers would be better substitutes for lower-paid laborers and apprentices than for journeymen. The construction

unions also pointed to possible long-term cost increases due to a shortage of skilled craftsmen.

These comments prompted a thorough re-evaluation of the helper cost methodology. Some comments required no new adjustment; for example, our methodology already controlled for the minimal use of helpers on union projects. The revised helper methodology incorporated relevant criticisms from both business and labor groups to the extent permitted by available data. The revised estimates were also based on more recent data showing a sharp drop in construction industry employment (and hence anticipated helper employment on Davis-Bacon projects).

The final helper regulations preserve the basic elements of the proposal with several changes. These changes include: (1) Lowering the ratio from 1:5 to 2:3 (2 helpers allowed for every 3 journeymen) to better reflect the diversity in industry practices, and (2) permitting helpers to include multitrade, as well as single craft, helpers to provide employers with maximum flexibility in their employment practices on Davis-Bacon jobs.

The basic methodology remains the same as that found in the PRIA—using evidence on the mix of skills in the construction industry *as a whole* to predict the increased helper employment on Davis-Bacon projects as a result of the regulation. The expected savings in wage costs on Davis-Bacon construction are derived by multiplying estimates of increased helper employment by changes in wage bills for contractors.

However, in the present analysis, we develop separate estimates of the likely cost savings from the regulations for the unrestricted use of helpers and for alternative ratios of helpers to journeymen. In addition, we test the sensitivity of the estimates to various assumptions regarding the skill level of workers replaced by helpers. One set of cost estimates assumes that helpers replace journeymen only. A second series of cost estimates allows helpers to replace laborers as well as journeymen.

The initial step involves determining the number of construction workers employed on Davis-Bacon projects and the number of helpers likely to be employed on Federal and federally-assisted construction work. For this analysis, we use a more recent estimate of construction employment showing that there were 758,000 construction workers on Davis-Bacon projects during 1980 (the PRIA used an estimate of one million total employees in the construction industry covered by Davis-Bacon in 1979). The FRIA discusses the derivation of these estimates in further detail.

While their skill composition is unknown, we assume that in the absence of any restrictions on their use, the helper share of employment on Davis-Bacon projects would be identical to that found overall in construction (excluding residential construction under 5 stories). The estimated helper share based on the 1976–1977 BLS survey of large metropolitan areas would be 3.2 percent and 5.6 percent, depending on whether we used the entire survey or only those occupations in the survey that specifically identify helpers.

However, the helper shares estimated directly from the BLS survey may be biased because of its limitation to large metropolitan areas and the 1976–1977 period. The BLS survey shows about 78 percent of construction workers under collective bargaining agreements. Although such agreements are almost certainly more prevalent on Davis-Bacon construction than on all construction, the BLS survey probably over-represents the percent of union workers on Davis-Bacon projects nationwide. This means that estimates of the helper employment share based on the BLS survey will be too small compared to total Davis-Bacon construction. To correct this bias, we base alternative helper estimates on the conservative assumption that the true union share of Davis-Bacon employment is 50 percent. Weighting the individual estimates found in the BLS survey data of helper employment shares within the union and non-union sectors produces adjusted estimates of the helper share of 5.98 percent and 9.4 percent.

This gives us four estimates of helper employment. Assuming that the high unionization rate found in the BLS survey of large cities prevails in all areas with Davis-Bacon projects, we can estimate that there will be between 24,256 and 42,448 additional helpers on Davis-Bacon projects. Assuming that 50 percent of the workers on Davis-Bacon jobs are organized would translate into higher estimates—45,328 and 71,252 additional helpers on Davis-Bacon jobs.

When helpers substitute for laborers in some cases as well as journeymen, the helper estimates need to be further adjusted. While it is difficult to evaluate the precise extent of this combined substitution, we use the estimated helper shares from above, but assume that helpers replace both types of labor as long as the proportion of laborers and journeymen found in the BLS Survey remains constant (i.e., the laborer to journeymen ratio). The BLS data shows the laborer to journeymen ratio to range between 2:5 and 5:11 for all construction projects in the sample. This produces estimates of helpers ranging from 24,256 to 64,056.

The second step is to calculate the expected hourly wage cost savings from hiring these helpers instead of journeymen. Using the PRIA procedures, we estimate the average wage differential between helpers and journeymen, based on the same 1977 BLS survey of large metropolitan areas adjusted to FY 1982 levels. This produces estimates of $5.72 and $5.73 as the absolute wage differential between helpers and journeymen.

For the adjusted estimates where we assume that 50 percent of Davis-Bacon is covered by union contracts, it was necessary to recalculate the wage rates accordingly. Separate union percentages for journeymen and helpers from the BLS survey were used to weight the union and non-union average hourly wage rates to arrive at the new overall averages of about $6.70.

The above estimates of wage differences assume that helpers replace only journeymen. If helpers substitute for laborers in some cases as well as journeymen, the wage differences in some cases will narrow substantially—ranging from $4.95 to $5.71. The final regulatory impact analysis describes these wage calculations in further detail as well as the biases involved in the use of average wage rates.

The next ingredient needed to compute the expected cost savings is an estimate of average hours worked annually in construction. The PRIA used an estimate of 1535 hours worked per year. However, in light of the ABC comments showing that contractors' annual work hours average well over 1900 hours and the fact that seasonality is already controlled for by our use of annual averages of monthly employment levels, we used 1924 hours from *Employment and Earnings* published by the Bureau of Labor Statistics as the estimate of annual hours worked per full year construction worker to convert helper employment levels into their total hours equivalents.

Our estimates of the resulting cost savings from increased recognition of helpers with no ratio were obtained simply by multiplying numbers of helpers by hours worked in a year (1924) and various estimates of the existing wage differential between helpers and journeymen and laborers.

However, where there is a ceiling restriction on the employment of helpers to journeymen, another step is necessary—modifying the methodology

to lower the estimates of helper employment. The new calculations assume that any ceiling has no impact on the union sector, since there are few helpers in union firms. However, the 1976–1977 BLS survey suggests that outside of residential construction under 5 stories, the average non-union ratio of helpers to journeymen is around 1:4. This means that the proposed 1:5 ratio or to a lesser extent the final 2:3 ratio would be limiting for some non-union firms and that the overall helper:journeymen ratio on federally-funded non-union projects would fall somewhat below 1:5.

For our analysis, we assumed that the proposed 1:5 regulation would result in an average ratio of 1 to 5.5 on federally-funded non-union projects, while a ratio of 2:3 would result in a higher average of 1 to 4.25 on these same projects. These new ratio assumptions have the effect of lowering the previous helper estimates.

Finally, when helpers substitute for laborers in some cases as well as journeymen, the helper estimates need to be further adjusted in the presence of a ratio. In this case, the ceiling restrictions lower helper employment in the non-union sector in two ways—(1) directly decreasing the allowed substitution of journeymen, and (2) increasing the number of laborers required to keep the proportion of laborers to journeymen constant.

The results of these calculations show that with a 1:5 ceiling and with helpers replacing journeymen, the estimated cost savings range between $263.49 million and $535.43 million. The corresponding midpoint estimate is roughly $400 million. This is the revised "best" estimate for the proposed regulation if helpers can replace only journeymen. With this same 1:5 ceiling, but with helpers replacing both laborers and journeymen, the estimated cost savings drop by approximately one-third—to $303.41 million on average. This supports the unions' contention of lower cost savings when helpers substitute for low skilled as well as higher skilled workers.

In light of the comments on the August proposal, the Department has decided to raise the ceiling from one helper for every five journeymen to two helpers for every three journeymen. The higher ratio will better reflect the wide diversity in practices among different types of construction and localities. The 2:3 ratio also increases the cost savings substantially.

If helpers replace journeymen only, the estimated cost savings range from $305.76 million to $640.95 million. This places the midpoint estimate of the likely cost savings with a 2:3 ceiling on the employment of helpers relative to journeymen at roughly $473.36 million. (This compares well to the PRIA estimates of $450 million in cost savings for the proposal under the assumption that helpers substitute only for journeymen.)

Once the final regulation is in effect, the more likely situation is one in which helpers would in some instances replace laborers as well as journeymen. If this is the case, the estimated cost savings range from $246.43 million to $479.89 million. This puts the average estimate of cost savings at $363.16 million assuming that helpers, in fact, replace both laborers and journeymen. This estimate also represents our "best guess" about the likely impact of the final regulation.

On the basis of this evidence, the Department has concluded that the final regulation will result in substantial cost savings and at the same time reflect industry practice, thereby providing contractors with the necessary flexibility in choosing their optimal employment mix on Davis-Bacon jobs. The final helper provision will also provide substantial cost savings for smaller contractors who predominate in the industry.

C. Summary

The final revisions discussed above, in conjunction with the changes proposed to Part 1 of the Davis-Bacon rules (e.g. a change in the definition of "prevailing rate") will result in substantial cost savings annually of $585 million for both contractors and the government, while still assuring protection of local wage rates and practices. The changes will have a substantial beneficial impact on small contractors.

Copies of the complete analysis may be obtained from the Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting and recordkeeping provisions that are included in §§ 5.5(a)(1)(ii), 5.5(a)(1)(iv), and 5.5(a)(3)(i) have been or will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.

Other information collection requirements contained in this regulation (see §§ 5.5(a)(3)(i), 5.5(c), and 5.5(d) (1) and (3)) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 1215–0017.

Conclusion

The Solicitor of Labor has determined in accordance with Executive Order 12291, that this regulation is clearly within the authority delegated to the Secretary of Labor by the Davis-Bacon Act (40 U.S.C. 276a *et seq.*), Reorganization Plan No. 14 of 1950 (5 U.S.C. Appendix), the Copeland Act (40 U.S.C. 276c), the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*), as well as 5 U.S.C. 301, 29 U.S.C. 259, and the remaining laws listed in § 5.1(a) of this part. The Solicitor, as set forth above in the discussion of the major issues, has determined that this regulation is consistent with the Congressional intent of the Davis-Bacon and related Acts that contractors on Federal and federally assisted projects subject to these Acts pay their workers at least the prevailing wages established in accordance with industry classification and wage practices. The regulation also provides protection for the workers and mechanisms for enforcement, as intended by the Davis-Bacon and related Acts, CWHSSA, and the Copeland Act.

Dates of Applicability

The provisions of §§ 5.2 and 5.5 of this part shall be applicable only as to contracts entered into pursuant to invitations for bids issued or negotiations concluded on or after July 27, 1982, *Provided,* however, that § 5.5(a)(1)(ii) concerning submission of a weekly "Statement of Compliance" will be applicable July 27, 1982 with respect to existing contracts, if the contracting agency and the contractor agree to amend the contract to delete the clause contained in existing § 5.5(a)(1)(ii) requiring weekly submission of payrolls, and incorporate § 5.5(a)(1)(ii) herein in the contract.

This document was prepared under the direction and control of William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 5

Government contracts, Investigations, Labor, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, Wages.

Accordingly, 29 CFR Part 5 is revised as set forth below.

Concurrent with the publication today of this final rule, the final rule previously

published in the **Federal Register** on January 16, 1981 (46 FR 4380) and subsequently stayed is hereby withdrawn.

Signed at Washington, D.C. on this 25th day of May 1982.

Raymond J. Donovan,

Secretary of Labor.

Robert B. Collyer,

Deputy Under Secretary for Employment Standards.

William M. Otter,

Administrator, Wage and Hour Division.

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

Sec.

* * * * *

Authority: 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; 40 U.S.C. 327–332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; and the statutes listed in section 5.1(a) of this part.

§ 5.1 Purpose and scope.

(a) The regulations contained in this part are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 and the Copeland Act in order to *coordinate* the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration and of such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon the Secretary of Labor under Reorganization Plan No. 14 of 1950:

1. The Davis-Bacon Act (sec. 1–7, 46 Stat. 1949, as amended; Pub. L. 74–403, 40 U.S.C. 276a–276a–7).

2. Copeland Act (40 U.S.C. 276c).

3. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–332).

4. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).

5. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).

6. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86–372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).

7. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).

8. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).

9. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).

10. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).

11. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendements of 1969 (sec. 423 as added by Pub. L. 91–230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92–318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.

12. The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113).

13. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).

14. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).

15. Rehabilitation Act of 1973 (sec. 306(b)(5) 87 Stat. 384, 29 U.S.C. 776(b)(5)).

16. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).

17. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).

18. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).

19. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

20. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).

21. National Visitors Center Facilities Act of 1966 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

22. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).

23. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

24. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

25. Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).

26. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 384; 42 U.S.C. 296a(b)(5)).

27. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

28. Safe Drinking Water Act (sec. 2(a) see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j–9(e)).

29. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o–3(b)(1)(H)).

30. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

31. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

32. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

33. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

34. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c–3).

35. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

36. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

37. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

38. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

39. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

40. Older Americans Act of 1965 (sec. 502, Pub. L. 89–73, as amended by sec. 501, Pub. L. 93–29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

41. Public Works and Economic Development Act of 1965 (sec. 712; 79 Stat. 575 as amended; 42 U.S.C. 3222).

42. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

43. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).

44. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

45. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

46. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

47. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

48. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).

49. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

50. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

51. Solid Waste Disposal Act (sec. 2, 90 Stat. 2823; 42 U.S.C. 6979).

52. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

53. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

54. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

55. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

56. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).

57. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4). Note.—Repealed December 9, 1969, and labor standards incorporated in sec. 1–1431 of the District of Columbia Code).

58. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89–694, but not in the United States Code).

59. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87–328) (considered a statute for purposes of the plan but not in the United States Code).

60. Energy Security Act (sec. 175(c), Pub. L. 96–294, 94 Stat. 611; 42 U.S.C. 8701 note).

(b) Part 1 of this subtitle contains the Department's procedural rules governing requests for wage determinations and the issuance and use of such wage determinations under the Davis-Bacon Act and its related statutes as listed in that part.

§ 5.2 Definitions.

(a) The term "Secretary" includes the Secretary of Labor, the Deputy Under Secretary for Employment Standards, and their authorized representatives.

(b) The term "Administrator" means the Administrator of the Wage and Hour Division or the authorized representative as set forth in this part. In the absence of the Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division, is designated to act for the Administrator under this Part. Except as otherwise provided in this Part, the Assistant Administrator for Government Contract Wage Standards is the authorized representative of the Administrator in the administration of the statutes listed in § 5.1.

(c) The term "Federal agency" means the agency or instrumentality of the United States which enters into the contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to the project subject to a statute listed in § 5.1.

(d) The term "Agency Head" means the principal official of the Federal agency and includes those persons duly authorized to act in the behalf of the Agency Head.

(e) The term "Contracting Officer" means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.

(f) The term "labor standards" as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes listed in § 5.1, and the regulations in Parts 1 and 3 of this subtitle and this part.

(g) The term "United States or the District of Columbia" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities.

(h) The term "contract" means any prime contract which is subject wholly or in part to the labor standards provisions of any of the acts listed in § 5.1 and any subcontract of any tier thereunder, let under the prime contract. A State or local Government is not regarded as a contractor under statutes providing loans, grants, or other Federal assistance in situations where construction is preformed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards.

(i) The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a "building"or "work" within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(j) The terms "construction", "prosecution", "completion", or "repair" mean all types of work done on a particular building or work at the site thereof (or, under the United States Housing Act of 1937 and the Housing Act of 1949, all work done in the construction or development of the project), including without limitation, altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work (or, under the United States Housing Act of 1937 and the Housing Act of 1949, in the construction or development of the project), by persons employed by the ontractor or subcontractor. However, the term "initial construction" in section 113 of Title 23, U.S.C., which pertains to Federal-aid highway work, does not include repair or maintenance work.

(k) The term "public building" or "public work" includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(l) The term "site of the work" is defined as follows:

(1) The "site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and, as discussed in

paragraph (l)(2) of this section, other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site".

(2) Except as provided in paragraph (l)(3) of this section, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are part of the "site of the work" provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

(3) Not included in the "site of the work" are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier or materialman which are establshed by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work". Such permanent, previously established facilities are not a part of the "site of the work", even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

(m) The term "laborer" or "mechanic" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in Part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of Part 541, are laborers and mechanics for the time so spent.

(n) The terms apprentice, trainee, and helper are defined as follows:

(1) "Apprentice" means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

(3) These provisions do not apply to "apprentices" and "trainees" employed on projects subject to 23 U.S.C. 113 who are enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(4) A "helper" is a semi-skilled worker (rather than a skilled journeyman mechanic) who works under the direction of and assists a journeyman. Under the journeyman's direction and supervision, the helper performs a variety of duties to assist the journeyman such as preparing, carrying and furnishing materials, tools, equipment, and supplies and maintaining them in order; cleaning and preparing work areas; lifting, positioning, and holding materials or tools; and other related, semi-skilled tasks as directed by the journeyman. A helper may use tools of the trade at and under the direction and supervision of the journeyman. The particular duties performed by a helper vary according to area practice.

(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is "employed" regardless of any contractual relationship alleged to exist between the contractor and such person.

(p) The term "wages" means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(q) The term "wage determination" includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of § 1.6 of this title.

§§ 5.3–5.4 [Reserved]

§ 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, or a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency. *Provided,* That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or

rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(*1*) Except with respect to helpers as defined in 29 CFR 5.2(n)(4), work to be performed by the classification requested is not performed by a classification in the wage determination; and

(*2*) The classification is utilized in the area by the construction industry; and

(*3*) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, agree with the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, or the laborers or mechanics to be employed in the classification or their representatives, do not agree with the contracting officer on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly

number of hours worked, deductions made and actual wages paid. (Approved by the Office of Management and Budget under OMB control number 1215–0017.) Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a "Statement of Compliance" to the (write in name of appropriate Federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the "Statement of Compliance" to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The prime contractor is responsible for the submission of the "Statement of Compliance" by all subcontractors.

(B) Each "Statement of Compliance" shall be signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(*1*) That the payroll for the payroll period contains the information required to be maintained under § 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;

(*2*) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(*3*) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. In addition, the contractor or subcontractor shall submit the required payroll records upon request of authorized representatives of the (write the name of the agency) or the Department of Labor. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices, trainees, and helpers*—(i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid

fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division dertermines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(iv) *Helpers.* Helpers will be permitted to work on a project if the helper classification is specified on an applicable wage determination or is approved pursuant to the conformance procedure set forth in § 5.5(a)(1)(ii). The allowable ratio of helpers to journeymen employed by the contractor or subcontractor on the job site shall not be greater than two helpers for every three journeymen (in other words, not more than 40 percent of the total number of journeymen and helpers in each contractor's or in each subcontractor's own work force employed on the job site). Any worker listed on a payroll at a helper wage rate, who is not a helper as defined in 29 CFR 5.2(n)(4), shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any helper performing work on the job site in excess of the ratio permitted shall be paid not less than the applicable journeyman's (or laborer's, where appropriate) wage rate on the wage determination for the work actually performed.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of Eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of Part 4 of this title. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day or which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) *Withholding for unpaid wages and liquidated damages.* The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by

the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job. (Approved by the Office of Management and Budget under OMB control number 1215–0017.)

§ 5.6 Enforcement.

(a)(1) It shall be the responsibility of the Federal agency to ascertain whether the clauses required by § 5.5 have been inserted in the contracts subject to the labor standards provisions of the Acts contained in § 5.1. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require the recipient of the Federal assistance to insert in its contracts the provisions of § 5.5. No payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency unless the agency insures that the clauses required by § 5.5 and the appropriate wage determination of the Secretary of Labor are contained in such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of § 5.5 or unless there is on file with the agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(2) Statements of Compliance submitted pursuant to § 5.5(a)(3)(ii) shall be preserved by the Federal agency for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Department of Labor at any time during the 3-year period.

(3) The Federal agency shall cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by § 5.5 and the applicable statutes listed in § 5.1. Investigations shall be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans. Requests for submission of payrolls as provided in § 5.5(a)(3)(iii) shall be made only in conjunction with specific compliance checks or enforcement actions. In making such examinations, particular care shall be taken to determine the correctness of classifications and to determine whether there is a disproportionate employment of laborers, of helpers where they are listed on the wage determination or conformed under § 5.5(a)(1)(ii), and of apprentices or trainees registered in approved programs. Such investigations shall also include evidence of fringe benefit plans and payments thereunder. Complaints of alleged violations shall be given priority.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages and liquidated damages and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(5) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the employee's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 CFR Part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(b) The Administrator shall cause to be made such investigations as deemed necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in § 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes listed in § 5.1. Federal agencies, contractors, subcontractors, sponsors, applicants, or owners shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations. The findings of such an investigation, including amounts found due, may not be altered or reduced without the approval of the Department of Labor. Where the underpayments disclosed by such an investigation total $1,000 or more, where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), or where liquidated damages may be assessed under the Contract Work Hours and Safety Standards Act, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation and any action taken by the contractor to correct the violative practices, including any payment of back wages. In other circumstances, the Federal agency will be furnished a letter of notification summarizing the findings of the investigation.

§ 5.7 Reports to the Secretary of Labor.

(a) *Enforcement reports.* (1) Where underpayments by a contractor or subcontractor total less than $1,000, and where there is no reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act that the contractor has disregarded its obligations to employees and subcontractors), and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation was made at the request of the Department of Labor. In the latter case, the Federal agency shall submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken (such as "letters of notice"), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under § 5.8

(2) Where underpayments by a contractor or subcontractor total $1,000 or more, or where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), the Federal agency shall furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator.

(b) *Semi-annual enforcement reports.* To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator. This report has been cleared in accordance with FPMR 101–11.11 and assigned interagency report control number 1482–DOL–SA.

(c) *Additional information.* Upon request, the Agency Head shall transmit to the Administrator such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.

(b) *Contract termination.* Where a contract is terminated by reason of violations of the labor standards provisions of the statues listed in § 5.1, a report shall be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act), giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, and the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

§ 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) The Contact Work Hours and safety Standards Act requires that laborers or mechanics shall be paid wages at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or forty hours in any work week. In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act in the amount of $10 for each calendar day or workweek in which such individual was required or permitted to work without payment of required overtime wages. Any contractor or subcontractor aggrieved by the withholding of liquidated damages shall have the right to appeal to the head of the agency of the United States (or the territory or District of Columbia, as appropriate) for which the contract work was performed or for which financial assistance was provided.

(b) *Findings and recommendations of the Agency Head.* The Agency Head has the authority to review the administrative determination of liquidated damages and to issue a final order affirming the determination. It is not necessary to seek the concurrence of the Administrator but the Administration shall be advised of the action taken. Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, and the amount of the liquidated damages computed for the contract is in excess of $500, the Agency Head may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages shall include findings with respect to any wage underpayments for which the liquidated damages are determined.

(c) The recommendations of the Agency Head for adjustment or relief from liquidated damages under paragraph (a) of this section shall be reviewed by the Administrator or an authorized representative who shall issue an order concurring in the recommendations, partially concurring in the recommendations, or rejecting the recommendations, and the reasons therefor. The order shall be the final decision of the Department of Labor, unless a petition for review is filed pursuant to Part 7 of this title, and the Wage Appeals Board in its discretion reviews such decision and order; or, with respect to contracts subject to the Service Contract Act, unless petition for review is filed pursuant to Part 8 of this title, and the Board of Service Contract Appeals in its discretion reviews such decision and order.

(d) Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act for a contract is $500 or less and the Agency Head finds that the sum of liquidated damages is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, an appropriate adjustment may be made in such liquidated damages or the contractor or subcontractor may be relieved of liability for such liquidated damages without submitting recommendations to this effect or a report to the Department of Labor. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

§ 5.9 Suspension of funds.

In the even of failure or refusal of the contractor or any subcontractor to comply with the labor standards clauses contained in § 5.5 and the applicable statutes listed in § 5.1, the Federal agency, upon its own action or upon written request of an authorized representative of the Department of Labor, shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee of funds until such time as the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

§ 5.10 Restitution, criminal action.

(a) In cases other than those forwarded to the Attorney General of the United States under paragraph (b), of this section, where violations of the labor standards clauses contained in § 5.5 and the applicable statutes listed in § 5.1 result in underpayment of wages to employees, the Federal agency or an authorized representative of the Department of Labor shall request that restitution be made to such employees or on their behalf to plans, funds, or programs for any type of bona fide fringe benefits within the meaning of section 1(b)(2) of the Davis-Bacon Act.

(b) In cases where the Agency Head or the Administrator finds substantial evidence that such violations are willful and in violation of a criminal statute, the matter shall be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Administrator shall be informed simultaneously of the action taken.

§ 5.11 Dispute concerning payment of wages.

(a) This section sets forth the procedure for resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, or proper classification. The procedures in this section may be initiated upon the Administrator's own motion, upon referral of the dispute by a Federal agency pursuant to § 5.5(a)(9), or upon request of the contractor or subcontractor(s).

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings. If the Administrator determines that there is reasonable cause to believe that the contractor and/or subcontractor(s) should also be subject to debarment under the Davis–Bacon Act or § 5.12(a)(1), the letter will so indicate.

(2) A contractor and/or subcontractor desiring a hearing concerning the Administrator's investigative findings shall request such a hearing by letter postmarked within 30 days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute and the reasons therefor, including any affirmative defenses, with respect to the violations and/or debarment, as appropriate.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR Part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceeding under § 5.12, the Administrator shall notify the contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings, and shall issue a ruling on any issues of law known to be in dispute.

(2)(i) If the contractor and/or subcontractor(s) disagree with the factual findings of the Administrator or believe that there are relevant facts in dispute, the contractor or subcontractor(s) shall so advise the Administrator by letter postmarked within 30 days of the date of the Administrator's letter. In the response, the contractor and/or subcontractor(s) shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a response under paragraph (c)(1)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor and subcontractor(s) (if any) accordingly.

(3) If the contractor and/or subcontractor(s) desire review of the ruling issued by the Administrator under paragraph (c)(1) or (2) of this section, the contractor and/or subcontractor(s) shall file a petition for review thereof with the Wage Appeals Board within 30 days of the date of the ruling, with a copy thereof the Administrator. The petition for review shall be filed in accordance with Part 7 of this title.

(d) If a timely response to the Administrator's findings or ruling is not made or a timely petition for review is not filed, the Administrator's findings and/or ruling shall be final, except that with respect to debarment under the Davis-Bacon Act, the Administrator shall advise the Comptroller General of the Administrator's recommendation in accordance with § 5.12(a)(1). If a timely response or petition for review is filed, the findings and/or ruling of the Administrator shall be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Wage Appeals Board.

§ 5.12 Debarment proceedings.

(a)(1) Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in § 5.1 other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts or subcontracts subject to any of the statutes listed in § 5.1.

(2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator shall transmit to the Comptroller General the names of the contractors or subcontractors and their responsible officers, if any (and any firms in which the contractors or subcontractors are known to have an interest), who have been found to have disregarded their obligations to employees, and the recommendation of the Secretary of Labor or authorized representative regarding debarment. The Comptroller General will distribute a list to all Federal agencies giving the names of such ineligible person or firms, who shall be ineligible to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to

the labor standards provisions of the statutes listed in § 5.1.

(b)(1) In addition to cases under which debarment action is initiated pursuant to § 5.11, whenever as a result of an investigation conducted by the Federal agency or the Department of Labor, and where the Administrator finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in § 5.1 (other than the Davis-Bacon Act), or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under section 3(a) thereof, the Administrator shall notify by registered or certified mail to the last known address, the contractor or subcontractor and its responsible officers, if any (and any firms in which the contractor or subcontractor are known to have a substantial interest), of the finding. The Administrator shall afford such contractor or subcontractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under paragraph (a)(1) of this section or section 3(a) of the Davis-Bacon Act. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or subcontractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter postmarked within 30 days of the date of the letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute. In considering debarment under any of the statutes listed in § 5.1 other than the Davis-Bacon Act, the Administrative Law Judge shall issue an order concerning whether the contractor or subcontractor is to be debarred in accordance with paragraph (a)(1) of this section. In considering debarment under the Davis-Bacon Act, the Administrative Law Judge shall issue a recommendation as to whether the contractor or subcontractor should be debarred under section 3(a) of the Act.

(2) Hearings under this section shall be conducted in accordance with 29 CFR Part 6. If no hearing is requested within 30 days of receipt of the letter from the Administrator, the Administrator's findings shall be final, except with respect to recommendations regarding debarment under the Davis-Bacon Act, as set forth in paragraph (a)(2) of this section.

(c) Any person or firm debarred under § 5.12(a)(1) may in writing request removal from the debarment list after six months from the date of publication by the Comptroller General of such person or firm's name on the ineligible list. Such a request should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, and shall contain a full explanation of the reasons why such person or firm should be removed from the ineligible list. In cases where the contractor or subcontractor failed to make full restitution to all underpaid employees, a request for removal will not be considered until such underpayments are made. In all other cases, the Administrator will examine the facts and circumstances surrounding the violative practices which caused the debarment, and issue a decision as to whether or not such person or firm has demonstrated a current responsibility to comply with the labor standards provisions of the statutes listed in § 5.1, and therefore should be removed from the ineligible list. Among the factors to be considered in reaching such a decision are the severity of the violations, the contractor or subcontractor's attitude towards compliance, and the past compliance history of the firm. In no case will such removal be effected unless the Administrator determines after an investigation that such person or firm is in compliance with the labor standards provisions applicable to Federal contracts and Federally assisted construction work subject to any of the applicable statutes listed in § 5.1 and other labor statutes providing wage protection, such as the Service Contract Act, the Walsh-Healey Public Contracts Act, and the Fair Labor Standards Act. If the request for removal is denied, the person or firm may petition for review by the Wage Appeals Board pursuant to 29 CFR Part 7.

(d)(1) Section 3(a) of the Davis-Bacon Act provides that for a period of three years from date of publication on the ineligible list, no contract shall be awarded to any persons or firms placed on the list as a result of a finding by the Comptroller General that such persons or firms have disregarded obligations to employees and subcontractors under that Act, and further, that no contract shall be awarded to "any firm, corporation, partnership, or association in which such persons or firms have an interest." Paragraph (a)(1) of this section similarly provides that for a period not to exceed three years from date of publication on the ineligible list, no contract subject to any of the statutes listed in § 5.1 shall be awarded to any contractor or subsontractor on the ineligible list pursuant to that paragraph, or to "any firm, corporation, partnership, or association" in which such contractor or subcontractor has a "substantial interest." A finding as to whether persons or firms whose names appear on the ineligible list have an interest (or a substantial interest, as appropriate) in any other firm, corporation, partnership, or association, may be made through investigation, hearing, or otherwise.

(2)(i) The Administrator, on his/her own motion or after receipt of a request for a determination pursuant to paragraph (d)(3) of this section may make a finding on the issue of interest (or substantial interest, as appropriate).

(ii) If the Administrator determines that there may be an interest (or substantial interest, as appropriate), but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (d)(4) of this section.

(iii) If the Administrator finds that no interest (or substantial interest, as appropriate) exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(iv)(A) If the Administrator finds that an interest (or substantial interest, as appropriate) exists, the person or firm affected will be notified of the Administrator's finding (by certified mail to the last known address), which shall include the reasons therefor, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue.

(B) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(C) If no hearing is requested within the time mentioned in paragraph (d)(2)(iv)(B) of this section, the

Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the ruling of the Administrator shall be inoperative unless and until the administrative law judge or the Wage Appeals Board issues an order that there is an interest (or substantial interest, as appropriate).

(3)(i) A request for a determination of interest (or substantial interest, as appropriate), may be made by any interested party, including contractors or prospective contractors and associations of contractor's representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, to the attention of the Office of Government Contract Wage Standards.

(ii) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has an interest (or a substantial interest, as appropriate) in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia, or which is subject to any of the statutes listed in § 5.1. No particular form is prescribed for the submission of a request under this section.

(4) *Referral to the Chief Administrator Law Judge.* The Administrator, on his/her own motion under paragraph (d)(2)(ii) of this section or upon a request for hearing where the Administrator determines that relevant facts are in dispute, will by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceedings shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

(5) *Referral to the Wage Appeals Board.* If the person or firm affected requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Wage Appeals Board to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR Part 7.

§ 5.13 Rulings and interpretations.

All questions relating to the application and interpretation of wage determinations (including the classifications therein) issued pursuant to Part 1 of this subtitle, of the rules contained in this part and in Parts 1 and 3, and of the labor standards provisions of any of the statutes listed in § 5.1 shall be referred to the Administrator for appropriate ruling or interpretation. The rulings and interpretations shall be authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

§ 5.14 Variations, tolerances, and exemptions from Parts 1 and 3 of this subtitle and this part.

The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of this part and those of Parts 1 and 3 of this subtitle whenever the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship. Variations, tolerances, and exemptions may not be made from the statutory requirements of any of the statutes listed in § 5.1 unless the statute specifically provides such authority.

§ 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

(a) *General.* Upon his or her own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.

(b) *Exemptions.* Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:

(1) Contracts of $2,000.00 or less.

(2) Purchases and contracts other than construction contracts in the aggregate amount of $2,500.00 or less. In arriving at the aggregate amount involved, there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising.

(3) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

(4) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.

(5) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 8311).

(c) *Tolerances.* (1) The "basic rate of pay" under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in Part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

(2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and § 778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the "regular rate" under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the "basic rate" under the Contract Work Hours and Safety Standards Act.

(3) See § 5.8(c) providing a tolerance subdelegating authority to the heads of

agencies to make appropriate adjustments in the assessment of liquidated damages totaling $500 or less under specified circumstances.

(4)(i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship or training programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.

(ii) The apprentice or trainee comes within the definition contained in § 5.2(n).

(iii) The time in question does not involve productive work or performance of the apprentice's or trainee's regular duties.

(d) *Variations.* (1) In order to prevent undue hardship, a workday consisting of a fixed and recurring 24-hour period commencing at the same time on each calendar day may be used in lieu of the calendar day in applying the daily overtime provisions of the Act to the employment of firefighters or fireguards, under the following conditions: (i) Where such employment is under a platoon system requiring such employees to remain at or within the confines of their post of duty in excess of 8 hours per day in a standby or on-call status; and (ii) if the use of such alternate 24-hour day has been agreed upon between the employer and such employees or their authorized representatives before performance of the work; and (iii) provided that, in determining the daily and the weekly overtime requirements of the Act in any particular workweek of any such employee whose established workweek begins at an hour of the calendar day different from the hour when such agreed 24-hour day commences, the hours worked in excess pf 8 hours in any such 24-hour day shall be counted in the established workweek (of 168 hours commencing at the same time each week) in which such hours are actually worked. (Approved by the Office of Management and Budget under OMB control number 1215–0017.)

(2) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the Unites States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.

(3) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of Section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 8 hours in any calendar day or 40 hours in the workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1½ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended. (Approved by the Office of Management and Budget under OMB control number 1215–0017.)

§ 5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.

(a) Notwithstanding the provisions of § 5.5(a)(4)(ii) relating to the utilization of trainees on Federal and federally assisted construction, no contractor shall be required to obtain approval of a training program which, prior to August 20, 1975, was approved by the Department of Labor for purposes of the Davis-Bacon and Related Acts, was established by agreement of organized labor and management and therefore recognized by the Department, and/or was recognized by the Department under Executive Order 11246, as amended. A copy of the program and evidence of its prior approval, if applicable shall be submitted to the Employment and Training Administration, which shall certify such prior approval or recognition of the program. In every other respect, the provisions of § 5.5(a)(4)(ii)—including those relating to registration of trainees, permissible ratios, and wage rates to be paid—shall apply to these programs.

(b) Every trainee employed on a contract executed on and after August 20, 1975, in one of the above training programs must be individually registered in the program in accordance with Employment and Training Administration procedures, and must be paid at the rate specified in the program for the level of progress. Any such employee listed on the payroll at a trainee rate who is not registered and participating in a program certified by ETA pursuant to this section, or approved and certified by ETA pursuant to § 5.5(a)(4)(ii), must be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed. The ratio of trainees to journeymen shall not be greater than permitted by the terms of the program.

(c) In the event a program which was recognized or approved prior to August 20, 1975, is modified, revised, extended, or renewed, the changes in the program or its renewal must be approved by the Employment and Training Administration before they may be placed into effect.

§ 5.17 Withdrawal of approval of a training program.

If at any time the Employment and Training Administration determines, after opportunity for a hearing, that the standards of any program, whether it is one recognized or approved prior to August 20, 1975, or a program subsequently approved, have not been complied with, or that such a program fails to provide adequate training for participants, a contractor will no longer be permitted to utilize trainees at less than the predetermined rate for the classification of work actually performed until an acceptable program is approved.

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